

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

IN RE: )  
 )  
CLERK’S INSTRUCTIONS REGARDING )  
NOTICE, HEARING AND ORDER )  
PROCEDURES )  
 )

**NOTICE, HEARING AND ORDER PROCEDURES**

To assist parties in understanding the procedures and methodologies employed by the Clerk’s Office in issuing notices, setting hearings, and preparing and entering orders, the Bankruptcy Clerk has promulgated the following non-binding guidance. This guidance is general in nature and may not reflect the actual procedures in any given case insofar as each case is unique, procedures evolve and/or change over time, and rules are amended. This guidance is published as a consequence of the Clerk’s Office Survey, issued in June 2013, wherein 61.3% of the respondents agreed or strongly agreed that having a better understanding of these procedures would assist the respondents in their work.

**I. Noticing**

**a. Preparation of Notices**

1. Numerous Bankruptcy Rules state that “the clerk, or some other person as the court may direct” is required to issue notice.<sup>1</sup> *See, e.g.*, Fed. R. Bankr. P. 2002(a). In this district, the Clerk’s Office prepares and issues nearly all notices that are required in a case. With the Court’s delegation, the Clerk’s Office uses certain form orders that require others to issue notice, such as when a debtor adds creditors to the mailing list after issuance of the notice of the meeting of creditors. The Clerk’s Office also works with noticing and claims agents when such entities are employed by a party in the case.
  
2. When attorneys include a notice with their filed document, the prepared notice is generally ignored by the Clerk’s Office in favor of the Clerk’s form notices, which allows for a consistent practice among all cases. In nearly all instances, when a party files and serves a motion on affected parties, no need exists for that party to also prepare the notice on the motion. However, in certain circumstances, the Clerk’s Office will use a notice prepared by counsel. For example, under Fed. R. Bankr. P. 2002(c)(1), a notice of the proposed use, sale or lease of property must

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<sup>1</sup> The Clerk’s Office is required to give notices under Fed. R. Bankr. P. 3001(e) (transfer of claim), 4004(g) (notice of discharge), and 9022 (notice of entry of judgment on contesting parties). These Bankruptcy Rules do not specifically allow for the delegation of noticing responsibilities under these specific subsections.

include the time and place of any public sale, the terms and conditions of any private sale, and have a general description of the property. When counsel prepares their own notice to accompany such use/sale/lease motion, the Clerk’s Office uses the form and content of the attorney-prepared specialized notice. Likewise, a notice of a motion to compromise a controversy under Fed. R. Bankr. P. 9019 and 2002(a)(3) may have very specific language and when such a specific, fact-based notice is prepared, the attorney prepared notice is generally used by the Clerk’s Office.

3. When attorneys prepare specialized notices, the attorney may file a motion to have the court approve the form and content of the notice before it is issued in an attempt to forestall potential future litigation over the adequacy of such notice. Ex parte consideration of such a motion is at the discretion of the presiding judge.

**b. Giving (“Service”) of Notice**

1. Important distinctions exist between service of a motion and the giving of a notice. When a party files a motion, the filing party is obligated to serve the motion on affected parties. The specific rules for service of a motion are found in Fed. R. Bankr. P. 9014(b), 7004, and 7005. This Clerk’s Office generally does not independently monitor whether a party properly served a motion.
2. In contrast to service of motions, notices are generally to be “given.” *See* Fed. R. Bankr. P. 2002(a) (“the clerk . . . shall give . . . notice by mail of . . .”). Only Fed. R. Bankr. P. 9006(d) requires “service” of a notice – and then only when the notice is of a hearing on a motion. However, no Federal Rule of Bankruptcy Procedure governs the service of a notice. *C.f.*, Fed. R. Bankr. P. 7004, 9014 (service of motions). Consequently, all notices, including notices of hearings on motions, are issued the same way in the Clerk’s Office. The Clerk’s Office generally uses the addresses on the main case mailing list and does not modify addresses to comply with Rule 7004. As a consequence, in some instances, a motion may be served on a particular addressee under Rule 7004, but the notice of the hearing will be issued to a different addressee based on information in the main case mailing list, as corrected by the Bankruptcy Noticing Center. Compare the difference between service of the motion and the notice of the hearing on the motion as it pertains to a Motion to Modify Chapter 13 Plan pursuant to Fed. R. Bankr. P. 3015(g), which requires both service and notice to all creditors:

Service Address (Under Rule 7004(b)(3))	Notice Address
Attention: Officer, Managing or General Agent CitiFinancial, Inc. P.O. Box 70923	CitiFinancial Bankruptcy Dept., PO Box 140069, Irving, TX 75014-0069 CitiFinancial, Inc, P.O. Box 70923, Charlotte, NC 28272-0923

3. No representation is made herein concerning whether notice of a motion can overcome the failure to serve a motion on the correct party. Attorneys are encouraged to follow the Rules governing service of motions and not rely on the notice to satisfy constitutional due process concerns. *See, e.g., United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272 (2010) (“Here, United received actual notice of the filing and contents of Espinosa’s plan. This more than satisfied United’s due process rights. Accordingly, on these facts, Espinosa’s failure to serve a summons and complaint does not entitle United to relief under Rule 60(b)(4).”).

**c. How Notice is Given**

1. Notice is generally given three ways by the Clerk’s Office:
  - A. Registered e-filing attorneys and registered pro se parties in the case consent to service of notice by e-mail notification when the attorney or pro se party signs up for electronic filing (which is mandatory in this District for attorneys). Within minutes of an entry being made on the case docket, the attorney or pro se party receives an emailed Notice of Electronic Filing (“NEF”)<sup>2</sup> and may have one free look at the document text before incurring PACER charges.<sup>3</sup> Pro se parties receive an additional unrestricted PDF image of the filed document. Under the Reduced Paper Module, registered e-filers are removed from the BNC mailing list to prohibit the transmission of paper notices. Under Fed. R. Bankr. P. 9036, notice is complete on transmission of the NEF. Consequently, registered e-filers must pay close attention to full in-boxes or discontinued email addresses as notice is deemed complete when transmitted – even if the email “bounced back” to the Clerk’s Office as undeliverable.

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<sup>2</sup> The attorney may elect to receive daily summaries in lieu of “instant” notification.

<sup>3</sup> Regarding service of documents initiating a contested matter, an issue exists as to whether the responding party can consent to email service of the motion in lieu of actual service under Fed. R. Bankr. P. 7004 as an NEF is not mentioned as a method of service in that Rule. Some courts have general orders or local rules that prohibit electronic NEF service when a document initiates a contested matter under Fed. R. Bankr. P. 9014. This court has no similar local rule, general order, or judicial decision. When attorneys register as e-filers with this bankruptcy court, the attorney must accept the e-filing registration agreement, which specifically provides:

The applicant requests and consents to receipt of notice and service by email, in lieu of paper notice by first class mail, pursuant to Rule 9036 of the Federal Rules of Bankruptcy Procedure.

As stated above, no Rule governs service of a notice; consequently, no impediment exists to service of a notice under Fed. R. Bankr. P. 9006(d) by NEF. A proposed change to Fed. R. Civ. P. 5, as made applicable to bankruptcy proceedings by Fed. R. Bankr. P. 7005 and 9104(b), will allow service of a motion between registered e-filers through the court’s CM/ECF system. Currently, that Rule is on track for becoming effective on December 1, 2017.

- B. Non registered e-filers, generally creditors and pro se parties, receive notice by mail. The mail room in the Clerk's Office is not used to issue notices. Nationally, nearly all bankruptcy clerks' offices use the Bankruptcy Noticing Center ("BNC") to issue notices that are mailed to parties. When a notice is issued by the Clerk's Office, the notice is electronically sent to the BNC, which, two days later, places the notice in the mail to the designated parties. After placing the notice in the mail, the BNC files a certificate of service in the case. Because mail from the BNC is delayed for two days after the notice is issued by the Clerk's Office, careful attention must be paid to the language of certain Rules, such as Fed. R. Bankr. P. 2002(a), which requires 21-days notice "by mail." Notice by mail is complete upon mailing. Fed. R. Bankr. P. 9006(e). A failure to account for the additional two days required for the BNC to place a notice in the mail may result in a deficient notice process. Consequently, the generic notices used by the Clerk's Office contain a deadline that is 23-days from issuance to ensure that the 21-day from mailing requirement is satisfied when that requirement is applicable.
  - C. Non e-filing parties are encouraged to use Electronic Bankruptcy Noticing ("EBN") in lieu of receiving paper notices through the BNC. This is a free service that allows large volume creditors to receive certain electronic notices that can be mailed to multiple addresses in prescribed formats. In calendar year 2016, about 30-40% of all the Clerk's Office notices were issued through EBN.
2. When the issuance of notice is delegated, the responsible party may place the notice in the U.S. Mail, or electronically issue notice to e-filing parties in the case merely by filing the notice and creating an NEF. The responsible party should pay close attention to the Federal Rules of Bankruptcy Procedure to ensure that the issued notice conforms to any prescribed time and content requirements. When there is no prescribed period stated in the Federal Rules, it is the general practice in this District to use a notice period that begins to run 21 days from when the notice is placed in the mail.

**d. Preferred Addresses for Noticing**

- 1. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 amended the U.S. Bankruptcy Code to enable creditors to specify preferred addresses for notices sent by the debtor or the court in Chapter 7 and 13 cases.
- 2. Under 11 U.S.C. § 342(e)(1), a creditor may file with the court and serve on the debtor a notice of address to be used in an individual Chapter 7 or 13 case. This address must be used for any notice sent in the case by the court or debtor starting

no later than five days after receipt of the creditor's notice of address. § 342(e)(2).

3. Under § 324(f)(1), with regard to all Chapter 7 and 13 cases, an entity may file a notice of address with any bankruptcy court to be used by all bankruptcy courts or a particular bankruptcy court, as specified by the entity. This preferred address must be used by a court starting no later than thirty days after receipt of the creditor's notice of address, unless a different address is specified in a notice filed and served under § 342(e).
4. The National Creditor Registration Service (NCRS), operated by the BNC, enables an entity to register a preferred address under 11 U.S.C. § 342(f)(1). An entity may register for the service at the NCRS website. [www.ncrs.uscourts.gov](http://www.ncrs.uscourts.gov)
5. As a consequence of preferred addresses, the specific address used by a debtor on the mailing list may not be the actual address to which the notice is issued. The BNC will automatically send the notice to the creditor's preferred address so long as the address used by the debtor is one of the alternate addresses specified by the creditor.

**e. Costs of Noticing**

1. When noticing is delegated to a party, the expense of noticing is the responsibility of the party. When the Clerk's Office issues notices, the cost of mailing the notice is paid by the Judiciary. Obviously, the Judiciary spends a large sum of money each year on noticing costs and this expense is closely examined. For example, for the 12-month period ending December 31, 2016, all bankruptcy courts spent approximately \$18.5 million in noticing costs; this Clerk's Office spent \$33,307 in issuing 154,349 notices. There is no cost to issuing NEFs to e-filing parties, reduced costs when a creditor signs up for the EBN service, and when the BNC mails documents, it combines multiple notices from all courts that are being delivered to the same address on the same day. Nationwide, bankruptcy clerks' offices are encouraged to delegate noticing responsibilities to the parties in the case to reduce costs to the Judiciary.

Total Notices	Events Noticed	Average Recipients	NEFs (Free)	U.S. Mail	EBN	Total Cost	Cost Per Notice
154,349	11,768	13	12,591	88,363	53,395	\$33,307	\$0.2350

2. The judiciary does not collect a noticing fee. The noticing fee was eliminated by the Judicial Conference for Chapter 7 and Chapter 13 cases in 1992 (JCUS-SEP 92, p. 64-65), and for all remaining cases in 1997 (JCUS-SEP 97, p. 55-56). The "administrative" portion of the filing fee is not a replacement for the former noticing fee and should not be viewed as a justification for the Judiciary to bear the

cost of noticing through the BNC or by using Clerk's Office resources.

**f. General Noticing Practices: What Type of Notice, How Many Days, and to Whom Issued**

1. The below charts cover nearly all filings that the Clerk’s Office receives and explains which filings receive what type of notice and to whom the notice is issued.
2. In general, bankruptcy consists of five different types of proceedings: adversary proceedings, contested matters, claims, applications, and notice proceedings. Each type of proceeding may proceed independently, in combination, and one type of proceeding may transmogrify into a different type of proceeding. Specific noticing rules may be widely different depending on the type and nature of the proceeding and the relief requested, and specific types of proceedings are counted for statistical analysis. The Clerk’s Office generally discourages the bundling of different requests for relief in a single document as bundling can result in conflicting noticing practices and create statistical inaccuracies. For bundled motions, the Clerk’s Office may require the filing party to submit separate motions, or, on its own, the Clerk’s Office may docket the bundled motion multiple times such that a single docket entry is created for each type of relief specified in the motion.
3. The title of a filed document must plainly reflect the nature of the filing, and be consistent with the request for relief. In issuing notices, the Clerk’s Office staff rely on the document’s title to ascertain what type of notice is required, and if there is a question, look to the request for relief. In general, Clerk’s Office employees do not read the body of the document.

<b>Noticing Legend for Attorney Filed Documents</b>	
<b>Notice Recipient Category</b>	<b>Notice Recipients (As Applicable to the Case)</b>
1	<ul style="list-style-type: none"> <li>• U.S. trustee;</li> <li>• Filing party;</li> <li>• Debtor;</li> <li>• Chapter trustee;</li> <li>• All creditors and indenture trustees;</li> <li>• Committees elected under § 705 or appointed under § 1102 of the Code or to authorized agents;</li> <li>• Securities and Exchange Commission (ch. 11 only) if the Commission has filed a notice of appearance in the case or written request to receive notices;</li> <li>• Commodity Futures Trading Commission (commodity broker case)</li> </ul>

	<ul style="list-style-type: none"> <li>only);</li> <li>• Internal Revenue Service (ch. 11 only);</li> <li>• If debt to U.S. other than for taxes, U.S. attorney for the district in which the case is pending and to the department/agency/instrumentality of the U.S. through which the debtor became indebted;</li> <li>• If filed papers disclose stock interest of U.S., Secretary of Treasury in Washington, DC;</li> <li>• Other entities as specifically directed by the court; and</li> <li>• Entities listed on the motion’s certificate of service (<i>i.e.</i>, affected parties only if entitled to the notice) not listed above.</li> </ul>
<p style="text-align: center;">2</p>	<ul style="list-style-type: none"> <li>• U.S. trustee;</li> <li>• Filing party;</li> <li>• Debtor;</li> <li>• Chapter trustee;</li> <li>• All creditors and indenture trustees;</li> <li>• Committees elected under § 705 or appointed under § 1102 of the Code or to authorized agents;</li> <li>• Securities and Exchange Commission (ch. 11 only) if the Commission has filed a notice of appearance in the case or written request to receive notices;</li> <li>• Commodity Futures Trading Commission (commodity broker case only);</li> <li>• Internal Revenue Service (ch. 11 only);</li> <li>• If debt to U.S. other than for taxes, U.S. attorney for the district in which the case is pending and to the department /agency/instrumentality of the U.S. through which the debtor became indebted;</li> <li>• If filed papers disclose stock interest of U.S., Secretary of Treasury in Washington, DC;</li> <li>• Other entities as specifically directed by the court; and</li> <li>• Entities listed on the motion’s certificate of service (<i>i.e.</i>, affected parties only if entitled to the notice) not listed above.</li> </ul> <p>In Ch. 7 cases, after 90 days following the first date set for the § 341 meeting OR 90 days after the mailing of a notice of time for filing claims under Rule 3002(c)(5) in the event a notice of no dividend has been given to creditors, instead of sending notices to all creditors, the court may choose to notice only creditors holding 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 pursuant to Rule 3002(c)(1) or (c)(2).</p>

	In a Ch. 13 cases, after the expiration of the claims' bar date, and if in the opinion of the court or Clerk's Office creditors without filed claims would lack standing to object, the Clerk may limit notices to only those creditors with filed claims.
3	<ul style="list-style-type: none"> <li>• U.S. trustee;</li> <li>• Filing party;</li> <li>• Debtor;</li> <li>• Chapter trustee;</li> <li>• Any elected or appointed committee or authorized agent, and if no committee has been elected or appointed and the case is under Chapter 11, the list of the 20 largest creditors filed under Fed. R. Bankr. P. 1007(d);</li> <li>• Other entities as specifically directed by the court; and</li> <li>• Entities listed on the motion's certificate of service (<i>i.e.</i>, affected parties only if entitled to the notice)</li> </ul>
4	<ul style="list-style-type: none"> <li>• U.S. trustee;</li> <li>• Filing party;</li> <li>• Debtor;</li> <li>• Chapter trustee;</li> <li>• Other entities as specifically directed by the court; and</li> <li>• Entities listed on the motion's certificate of service (<i>i.e.</i>, affected parties only if entitled to the notice); or, if the filing is in an adversary proceeding, all parties in the adversary proceeding.</li> </ul>

4. Numerous entities are listed in the above legend not all of which will be a party to the case, or, if a party to the case, the entity may not be an interested party to the motion being noticed. The above legend considers a number of different factors:
- A. All registered e-filing attorneys are NEF recipients of every document that is filed in a case. As this court has implemented mandatory e-filing and, to date, has not granted a single, sustained exemption, the Clerk's Office generally does not need to distinguish between e-filing attorneys and non-e-filing attorneys. Also, both attorneys and non-attorneys may register with the Clerk's Office for a e-filing log-in and password and register in the case to receive copies of NEFs so long as the limited use privileges are not used to generally monitor a case in which the user does not anticipate filing a document.
  - B. The NEF recipients always include the United States trustee and the panel Chapter 7 and Chapter 13 trustees. Only rarely is a Chapter 7 trustee elected, and determining whether a non-registered, elected trustee is entitled to notice of a filed document is a determination that only has to be made by the Clerk's Office in those rare instances.



- C. The moving party’s certificate of service is consulted when notice may be limited and the Clerk’s Office is not aware of the identity of the affected parties. When notice is given by the Clerk’s Office, it may be given to entities not listed on the motion’s certificate of service, or to fewer entities listed on the motion’s certificate of service as the requirements for notice and service are frequently different. When notice is being issued to an entity on the certificate of service that is not on the main case mailing list, the party is generally added to the case by the Clerk’s Office as an additional recipient.
  - D. Notice is only given to a party by one method: if the party receives an NEF, no other form of notice is given.
  - E. When a party is represented by an attorney, only the attorney will receive the notice unless the represented party has registered in the case as an e-filer. Regarding individual debtors, however, the Clerk’s Office generally issues notice to both the debtor and the debtor’s attorney.
5. Below is a list of documents that are commonly filed with the Clerk’s Office which receive a notice allowing the appropriate parties 23 days from issuance of the notice (21 days from when the BNC places the notice in the mail) to file a response:

<b>Documents Receiving a Notice of 23 Days from Issuance (21 Days by Mail)</b>		
<b>Filed Document</b>	<b>Rule</b>	<b>Notice Recipient Category</b>
Abstain	FRBP 5011	4
Administrative Expenses	FRBP 2002(a)(6), (c)(2), (k), 2016, 6005	If less than \$1,000: No notice or notice to Category 4.  If \$1,000 or greater: Category 2.  Note: Under FRBP 2002(c)(2) the notice on the motion for compensation must identify the applicant and the amount requested. Under FRBP 6005, an order appointing an auctioneer or appraiser must fix the amount or rate of compensation.
Accounting	NA	4  Note: if a report and account is filed by a custodian under Rule 6002(a) that

		requests compensation, then notice is to Category 2 if the compensation is \$1,000 or greater.
Add a Party	FRBP 7014	4
Adequate Protection or Increase in Adequate Assurance Payments (unless bundled with a motion for relief from the automatic stay)	FRBP 4001(d)	3
Allow a Claim	FRBP 3002(c)	4
Amend a Complaint / Answer	FRBP 7015	4
Appoint a Trustee	FRBP 2007.1(a), 2008, 9034	4
Appoint Consumer Ombudsman	FRBP 2007.2(e)	3
Approve Settlement / Compromise Controversy	FRBP 2002(a)(3)	2  Note: Settlements in adversary proceedings are noticed in the main case.  Note: this notice may be eliminated when creditors of the estate have no standing to object, such as in the settlement of an exception to discharge complaint.
Assume Lease or Executory Contract	FRBP 6006(c)	4  <i>See also</i> 11 U.S.C. § 105(d)(2)(A): if a status conference is set on the time to assume or reject leases and executory contracts, notice is sent to Category 1.
Avoid Liens Under 11 U.S.C. § 522(f)	FRBP 4003(d)	4
Borrow	FRBP 4001(c)	3  Note: In Chapter 13 cases, the Court allows a joint stipulation authorizing post-petition debt to be entered without notice if the joint stipulation is on the Court's form, and is agreed-to by the debtor and the Chapter 13 trustee.
Change Venue	FRBP 1014	4

		Note: No motion by a debtor to file out of venue is required. The time for a party other than the debtor to file out of venue is stated in the § 341 notice and is 21 days after the date first set for the § 341 hearing. Because the deadline is already given to all creditors, a second notice is not required.
Compensation from the Estate	FRBP 2002(a)(6), (c)(2), (k), 2016, 6005	If less than \$1,000: No notice or notice to Category 4.  If \$1,000 or greater: Category 2.  Note: Under FRBP 2002(c)(2) the notice on the motion for compensation must identify the applicant and the amount requested. Under FRBP 6005, an order appointing an auctioneer or appraiser must fix the amount or rate of compensation.
Consolidate Cases	FRBP 1015	4
Contempt	FRBP 9020	4
Convert Case from Chapter 7 or 11	FRBP 2002(a)(4), (d), (h), (i), (j), (k).	2  Note: Notice of a motion to convert under 11 U.S.C. § 707(a)(3) or (b) is limited to Category 4.  Note: The notice is also issued to equity security holders in Chapter 11 cases. Fed. R. Bankr. P. 2002(d)(4).  Note: Conversions from Chapter 7 to Chapter 13 are immediate; however, the order of conversion affords parties in interest 23 days from entry of the Order to contest the conversion on grounds such as those stated in <i>Marrama v. Citizens Bank</i> , 549 U.S. 365 (2007).

Convert Case from Chapter 13 to Chapter 11 or 12	FRBP 1017(f)	4
Damages for Creditor Misconduct	FRBP 3002.1(i), 9020	4
Deconsolidate Case Association	FRBP 1015	4
Deny Discharge Under 11 U.S.C. §§ 727(a)(8), (9), or 1328(f)	FRBP 4004(a), 7001(4)	4
Determine Secured Status	FRBP 3012, 3013	4  Note: This may be filed as an adversary proceeding under FRBP 7001(2).
Determine Tax Liability	NA	4  Note: This may be filed as an adversary proceeding under FRBP 4007(a) and 7001(6).
Determine Value of Property	FRBP 3012 3013, 7001	4
Definite Statement	FRBP 7012 (Fed. R. Civ. P. 12(e))	4
Distribute (Interim)	FRBP 3009	4  Note: for notice of a final report, see FRBP 2002(f)(8) and FRBP 5009(a).
Delay Discharge	FRBP 4004(b)	4  Note: The proposed order may be immediately entered without notice if the motion to delay discharge is filed by the debtor.  Note: Discharge will not be entered while the motion is pending.
Dismiss a Case, excluding: (1) Chapter 13 motions to dismiss filed by the debtor, (2) dismissals under 11 U.S.C. § 524(i), (3) motions to dismiss a Chapter 11 case under § 1112(b), (4) administrative dismissals for	FRBP 1017, 2002(a)(4), (d), (h), (l), (j), (k)	2  Note: In chapter 11 cases, equity security holders must be notified of the hearing on the dismissal of a case. Fed. R. Bankr. P. 2002(d)(4).

failure to pay filing fee or comply with deficiency notice; and (5) motions to dismiss under 11 U.S.C. §§ 707(a)(3) or (b)		
Dismiss Case under 11 U.S.C. §§ 707(a)(3) or (b)	FRBP 1017(e), 2002(a)(4)	4
Dismiss a Party	FRBP 7012, 7014, 7019, 7020, 7021, 7022	4
Examine Attorney Compensation	FRBP 2016, 2017	4
Extend Exclusivity Period	NA	4
Extend Plan Payments	NA	4  Note: Such a motion may be treated as a plan modification under FRBP 3015(g), and noticed under Category 1.
Extend Time to Object to Discharge and/or Dischargeability	FRBP 4007(c)	3  Note: The court may deny the motion without notice if it is untimely filed. <i>See</i> FRBP 4007(c) and 9006(b)(3).  Note: If the motion is timely filed by the debtor, the proposed order may be entered without notice.
Exemption from Course in Financial Management	FRBP 1007(c)	4
Intervene	FRBP 7024	4
Joint Administration	FRBP 1015	4
Moratorium	NA	4  Note: Such a motion may be treated as a plan modification under FRBP 3015(g), and noticed under Category 1.
Modification of Chapter 11 Plan After Acceptance and Before Confirmation	FRBP 3019(a)	The court may find that the modification does not adversely affect creditors on notice to the U.S. trustee, any committee appointed under the Code, any entity designated by the

		court.
Modify Plan After Confirmation	FRBP 3015(g), 3019(b)	1  Note: if creditors are not negatively affected by the proposed modification, the notice may be limited to Category 4.  Note: A copy or summary of the proposed modification must accompany the notice.  Note: In Chapter 11 cases, notice of the modification is given to equity security holders. Fed. R. Bankr. P. 2002(d)(7).  Note: In individual chapter 11 cases, notice is to the debtor, the trustee, and all creditors, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification.
Pay Chapter 11 Employees	FRBP 6003(b)	4
Quash	Various	4
Reconsider	FRBP 9023, 9024 (Fed. R. Civ. P. 59(e), 60(b))	4
Reclassify Claims	FRBP 3013	United States trustee, filing party, debtor, chapter trustee, any committee representative of those to be classified and absent a representative committee, the entities to be classified, entities listed on the motion's certificate of service.
Redeem	FRBP 6008	4
Reinstate Case	FRBP 9023, 9024	4
Reject Executory Contract or Lease	FRBP 6006	4 (specifically including the other party to the contract or lease pursuant to Fed. R. Bankr. P. 6006)

		<i>See also</i> 11 U.S.C. § 105(d)(2)(A): if a status conference is set on the time to assume or reject leases and executory contracts, notice is sent to Category 1.
Remand	FRBP 9027(d)	4
Reopen	FRBP 5010	4
Resume Billing Statements	NA	4
Remove Professional	NA	4
Sanctions under 28 U.S.C. § 1927	FRBP 9020	4
Sanctions for violation of stay (when brought by motion)	FRPB 7001; 9020	4
Sanctions for Violation of the Discharge Injunction (when brought by motion)		Note: The Court may allow this proceeding by motion when there is consent by the opposing party.
Summary Judgment	FRBP 7056	4
Sell, Use or Lease Outside Ordinary Course of Business	FRBP 2002(a)(2), (c)(1), (h), (i), (j), (k); 6004(a)	2  In Chapter 11 cases, equity security holders must be notified of a sale of substantially all the debtor's assets. Fed. R. Bankr. P. 2002(d)(3).
Stay Pending Appeal	FRBP 8005	4
Suspend Plan Payments	NA	4  Note: Such a motion may be treated as a plan modification under Fed. R. Bankr. P. 3015(g), and noticed under Category 1.
Sever Case	FRBP 1015(b), 1017, 7021	4
Transfer Case	FRBP 1014, 7087	4
Transfer of Claim Other than for Security After Proof Filed an Time for Objection	FRBP 3001(e)(2)	Alleged Transferor
Transfer of Claim: Right to Join in Filed Claim Where There was a Transfer of Claim for Security Before Proof of Claim Filed	FRBP 3003(e)(3)	If the transferor files the claim, the notice is to the transferee; if the transferee files the claim, notice is to the transferor.
Transfer of Claim: Evidence of a Transfer of Claim for Security	FRBP 3003(e)(4)	Alleged transferor.

After Proof of Claim Filed and Time for Objection		
Turnover Property (when brought by motion)	FRBP 6002, 7001	4  Note: On objection, the Court may require an adversary proceeding to be filed.
Use of Cash Collateral	FRBP 4001(b)(3)	3  Note: The default noticing rule is 23-days from issuance; parties frequently move to shorten the notice and/or the court requests a hearing be set.
Continuation of Utility Service	NA	4
Vacate	FRBP 9023, 9024	4

6. Below is a list of documents that are commonly filed with the Clerk's Office which receive a notice allowing the appropriate parties 30 days from issuance of the notice to file a response and/or or providing at least 30 days' notice of a scheduled hearing on a filed document.

<b>Documents Receiving a Notice of 30 Days from Issuance (28 Days by Mail)</b>		
<b>Filed Document</b>	<b>Rule</b>	<b>Notice Recipients</b>
Approve Disclosure Statement, or, under § 1125(f), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary.	FRPB 2002(b), (d), (i), (j), (k),	1  Note: The notice is also issued to equity security holders.
Final Report of Chapter 7 or 13 Trustee	FRBP 2002(f)(8), 5009(a)	1  The Clerk's Office issues a notice of publication to the mailing list which directs the recipients to view the final report on the court's website.  Note: No notice is required for a Chapter 7 estate of less than \$1,500
Hearing on Confirmation of Chapter 11 Plan (Original or Amended)	FRBP 2002(b), (d), (i), (j), (k), 3016, 3017, 3017.1	1  Note. The notice is also issued to equity security holders.



Hearing on Confirmation of Chapter 13 Plan (Original or Amended)	FRBP 2002(b), 3015	1
Objection to Claim	FRBP 3007(a)	4

7. Below is a list of documents that are commonly filed with the Clerk’s Office which are referred directly to the presiding judge without issuance of notice.

<b>Documents Referred Directly to the Presiding Judge Without Notice</b>		
<b>Filed Document</b>	<b>Rule</b>	<b>Notice Recipients</b>
2004 Examination	FRBP 2004	Generally none. The Court or Clerk may specifically direct that notice be given under Category 4 before entering the order, or may set the motion directly for a hearing.
Agreed Order in Chapter 13 Case Filed by a Party Other than the Chapter 13 Trustee	NA	None. If the Agreed Order is not filed by the Chapter 13 Trustee’s office, the Clerk may wait up to 72 hours for a restricted viewing text entry by the Chapter 13 trustee that her Office has actually agreed to the Order.
Allow Direct Plan Payments	NA	None.
Amend	FRBP 1009(d), 7015, 9014	Parties are generally free to file amended motions at any time. If the motion is one that requires payment of a fee (such as for stay relief), and the motion being “amended” was finally determined, the Clerk’s Office may treat the “amendment” as a new motion, require a fee, and issue a new notice. If a motion to amend is filed, the court may direct that notice be issued.  If a specific federal rule or order in the case requires leave of court to amend, then the Clerk’s Office will give notice to Category 4.
Confirming Absence of Stay under 11 U.S.C. § 362(c)(4)	NA	None.

Consolidate for Hearing	NA	None, if the consolidation is of pending motions in the case. If a motion is to consolidate two or more adversary proceedings for trial, then notice is issued to Category 4.
Continue Hearing	NA	None.  Note: Motions to continue should be filed in writing and state whether the affected parties agree to the continuance.
Convert Case from Chapter 13 to Chapter 7	FRBP 1017(f)(3) & 11 U.S.C. § 1307(a)	None.
Convert Case from Chapter 7 to Chapter 13	FRBP 2002(a)(4), (d), (h), (i), (j), (k).	Note: Conversions from Chapter 7 to Chapter 13 are immediate; however, the order of conversion affords parties in interest 23 days from entry of the Order to contest the conversion on grounds such as those stated in <i>Marrama v. Citizens Bank</i> , 549 U.S. 365 (2007).
Defer Filing Fee	NA	None.  Note: In most instances, fees are generally automatically deferred without motion for case trustees until such time as assets are realized for the estate. As of the date of these guidelines, the Judicial Conference has not specifically approved a deferral of the fee for filing a motion to sell free and clear under 11 U.S.C. § 363(f).
Delay Discharge (only if filed by the debtor before discharge is entered)	FRBP 4004(b)	None.
Deposit Unclaimed Funds / Deposit Funds in Court Registry	FRBP 3010, 3011, 7067	None.
Dismiss / Withdraw a Party's Own Document	NA	Generally none unless some other rule applies, such as for a debtor's request to dismiss the debtor's Chapter 7 petition.

Dismiss a Case under 11 U.S.C. § 524(i)	NA	None.  The Court may direct that notice be issued or a hearing be set to determine the truth of the allegations.
Enlarge Time	FRBP 9006	Generally none unless the enlargement of time is governed by another rule, in which case the motion may be denied or notice may be issued. <i>See</i> FRBP 9006(b)(2-3).
Enlarge Time to Acquire Financial Management	FRBP 1007(c)	None.
Expedite Hearing	NA	None. The Court may direct that a preliminary hearing be held. Notice is limited to Category 4.
Expunge	FRBP 9018, 9037	The court may seal documents upon filing of a motion and set the motion for hearing, or issue notice, to determine if the seal should be permanent. Notice is limited to Category 4.
Extend Time to Appeal	FRBP 8002(c)	None. If a showing of excusable neglect is required, the court may set the motion for hearing with notice to Category 4.
Extend Time to Obtain Credit Counseling	FRBP 1007(b)(3)	None. A request for the first 30-day exemption under 11 U.S.C. § 109(h)(3)(B) may be granted without notice if the court is satisfied with the information provided in the request. If granted, no notice is provided when the debtor is seeking an additional 15 days under § 109(h)(3)(B).
Extend Deadline to File Schedules	FRBP 1007-I(c)	None. The proposed order extending time should provide that the schedules are due 7 days before the date first set for the § 341 meeting of creditors.
Extend Time to Meet a Court Imposed Deadline	NA	None. The Court may direct that a hearing be held.
File an Amended Proof of Claim	NA	None. Creditors are free to file amended claims at any time. If the creditor seeks a declaration that the amended claim is not a new claim that

		is time-barred, the Clerk's Office will issue notice to Category 4.
Stipulation Authorizing Post Petition Debt in Chapter 13	NA	None if the Joint Stipulation is agreed by the Debtor and the Chapter 13 trustee and the parties use the Court's mandatory form.
Limit Notice	FRBP 2002(m), 9006(b)	None. The court may set such motions for interim and final hearings in appropriate cases.
Non-Qualification of Trustee	FRBP 2011	Court and U.S. trustee.
Pay Filing Fee in Installments	FRBP 1006(b)	None.
Preliminary Approval of Disclosure Statement	FRBP 3017.1	None. The court generally waits 48 hours to see if the United States trustee will object to the preliminary approval of the disclosure statement.
Proceed In Forma Pauperis	FRBP 1006(c)	None.
Pro Hac Vice	NA	None. The court may set a pro hac vice motion for hearing.
Protective Order	FRBP 9017, 9037	The court may order immediate relief and then set the motion for hearing, or issue notice, to determine if the protective order should remain in place. Notice is limited to Category 4.
Reaffirmation	FRBP 4008	None. All pro se reaffirmation agreements are set for hearing. When a presumption of undue hardship arises under 11 U.S.C. § 524(m), and the creditor is not a credit union, the court may either enter an order disposing of the issue, or set the reaffirmation agreement for hearing. The hearing is on notice to the debtor and creditor.
Recusal	FRBP 5004	None when the recusal or disqualification is based on the presiding judge's conflicts check-list. Such circumstances are usually flagged before judge assignment is made. In other cases, a motion for recusal or disqualification may be set for hearing, or have notice issued, with notice limited to Category 4.

Refund	NA	None.
Restrict Public Access / Seal	FRBP 9018, 9037	The court seals the documents upon filing of the motion and issues a notice of time to object. If no objection is filed, the seal may become permanent. When notice is issued, it is limited to Category 4, and includes the parties' whose information was exposed.
Substitute Attorney	NA	None.
Waive Filing Fee	FRBP 1006(c)	None.
Withdrawal as Attorney	NA	None if the attorney is not the attorney for the debtor and if the attorney is not a party to pending litigation in the case. Withdrawal can be accomplished directly by the attorney in CM/ECF.  When a debtor's attorney seeks to withdraw, or an attorney in active litigation seeks to withdraw, a motion and court approval is required. Based on the circumstances outlined in the motion, the motion may be granted ex parte, notice may be given, or the motion may be set for hearing. If notice is issued, it is limited to Category 4.
Withdraw Monies from Registry (Court Registry Investment System (CRIS)).	FRBP 7067	None if the motion to withdrawal is based on agreement of all contesting parties or pursuant to a judgment of the court, otherwise Category 4.

8. Below is a list of documents that are commonly filed with the Clerk's Office which are not subject to a 23-day notice from issuance, a 30-day notice from issuance, or referred directly to the presiding judge.

<b>Documents Subject to a Different Noticing Rule</b>		
<b>Filed Document</b>	<b>Rule</b>	<b>Notice Recipients</b>
Abandon	FRBP 6007(a)	The trustee or debtor in possession is required to give notice of the proposed abandonment or disposition of property to the United States trustee,

		<p>all creditors, indentured trustees, and committees elected or appointed.</p> <p>When a motion to abandon is filed, a 14-day notice is issued to Category 1.</p> <p>Note: The Court prefers to enter orders on notices/motions to abandon for the purpose of ensuring that property is specifically identified and determining the exact date of abandonment.</p>
Appoint a Committee (filed by a party other than the United States trustee)	FRBP 2007(a),	<p>Set directly for hearing. Notice of the hearing is given to Category 4.</p> <p><i>See</i> 11 U.S.C. §§ 705, 1102</p>
Automatic Stay Not in Effect for Residential Real Property	NA	<p>Lessor and debtor. <i>See</i> 11 U.S.C. § 362(l)(4)(B). These notices are specialized to meet the requirements of the statute.</p>
Cancel § 341 meeting	FRBP 2003	<p>The United States trustee schedules and cancels § 341 meeting. Please do not file a motion with the Court.</p>
Continue § 341 Meeting	FRBP 2003	<p>The case trustee continues § 341 meetings. Please do not file a motion with the court.</p>
Convert or Dismiss Case under 11 U.S.C. § 1112(b)	NA	<p>These motions are set for a preliminary telephonic hearing 5-7 days after the filing of the motion. Notice is limited to Category 4.</p>
Costs	FRBP 7054	<p>1-day notice to Category 4.</p>
Dismiss Chapter 13 Case for Failure to Make Monthly Plan Payment	NA	<p>Set directly for hearing on notice to Category 4.</p>
Employ	FRBP 2014	<p>4</p> <p>Note: At the request of Chapter 7 trustees, notice of a motion to employ was reduced from 21 days by mail to 14 days by mail.</p>
Entry of Default / Default Judgment	FRBP 7055, 9014	<p>No notice is issued on entry of default if the Clerk's Office is satisfied with the Request for Entry of Default.</p>

		If entry of default is made by the Clerk, the Clerk’s Office issues a 21-day notice by mail, limited to Category 4 recipients, regarding the motion for default judgment.
Exemption from Credit Counseling	NA	<i>See</i> 11 U.S.C. § 109(h)(4). The court may either direct that the Clerk issue notice on the request or that a hearing be set. Notice is limited to Category 4.
Extend the Automatic Stay Under § 362(c)(3)	NA	Generally, these motions are set directly for hearing because an order must be entered within the 30 day period following the petition date and the debtor must demonstrate good faith. Notice of the hearing is limited to Category 4.  Note: A motion to extend the automatic stay must be filed within the first 7 days of the case to ensure that the Court has an opportunity to set the motion for hearing and issue a ruling within the statutory time limits.
Hardship Discharge	FRBP 4007(d)	A motion for a hardship discharge is generally set for hearing, but the hearing may be cancelled if the trustee recommends the hardship discharge be granted. The Clerk’s Office generally sets motions for hardship discharge for hearing at least 23 days after the filing of the motion to recipients listed in Category 4.  Note: Under FRBP 4004(d), creditors must have at least 30 days to object to dischargeability under 11 U.S.C. § 523(a)(6). This limitation is rarely at issue in hardship discharge cases. When the provision is applicable, notice must be issued to Category 1.
Impose Automatic Stay Under § 362(c)(4)	NA	Generally, these motions are set for hearing as soon as possible as no stay

		is in effect until the court enters an order. Notice is limited to Category 4.
Motion for Adequate Protection	FRBP 4001(d)	14-day notice when bundled with a § 362 motion; otherwise 23-day notice from issuance. Notice is limited to Category 3.
Notice By Individual Chapter 7 Debtor of Assumption of Lease of Personal Property Not Timely Assumed by the Trustee	NA	<i>See</i> 11 U.S.C. § 365(p). The notice is filed by the Debtor. No action is taken by the Clerk's Office.
Notice Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence	FRBP 3002.1	The notice is filed by the secured creditor. No action is taken by the Clerk's Office.
Preliminary Injunction / Temporary Restraining Order	FRBP 7065, 9014	A hearing is set with notice limited to Category 4.
Prohibit Use of Cash Collateral	FRBP 4001(a)	A hearing is set with notice of the hearing limited to Category 3.
Proposed Findings of Facts and Conclusions of Law	FRBP 9033(b)	Contesting parties. If an objection is filed, other contesting parties have 14 days to respond after service of the objection. The 3-day rule for service by mail is applicable. FRBP 9006(f).
Relief from the Automatic Stay / Co-Debtor Stay	FRBP 4001(a)	14-day notice is given to Category 4.  The notice period is 14 days to allow the court to set a hearing, if necessary, before the 30 <sup>th</sup> day following the filing of the motion. <i>See</i> 11 U.S.C. § 362(e).
U.S. Trustee's Statement that a Motion to Dismiss is not Appropriate under 11 U.S.C. § 707(b)	NA	If a statement is filed under 11 U.S.C. § 704(b)(1)(A) that a Chapter 7 case is not presumed to be an abuse, the Clerk's Office provides a notice of the statement to all creditors. These statements are generally not filed in this District when a case is not presumed abusive.  If a statement is filed under § 704(b)(1)(A), the United States trustee has 30 days to file a motion to dismiss the case or a statement that the United



		States trustee does not deem such a motion appropriate. No notice is issued by the Clerk's Office upon this filing.
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9. Below is a list of other notices that the Clerk's Office is required to send under the Federal Rules of Bankruptcy Procedure, or by statute, even without a document being filed by a party.

<b>Other Notices Issued by the Clerk's Office</b>		
<b>Notice</b>	<b>Rule</b>	<b>Notice Recipients</b>
Amended Schedules	FRBP 1009(a-c)	U.S. trustee (via NEF upon the filing of the amendment)
Close Case Without Discharge for Failure to Obtain Financial Management	FRBP 5009(b)	Debtor.
Discharge	FRBP 4004(g)	1
Erroneous Filings with the Clerk Intended for the U.S. Trustee,	FRBP 5005(c)	U.S. trustee
Entry of Judgment	FRBP 9022(a)	Contesting parties, U.S. trustee, and other entities as the court directs.
Entry of Judgment by District Judge	FRBP 9022(b)	U.S. trustee
File Claims	FRBP 3004	Creditors, debtor, trustee.
Final Decree	FRBP 3022, 5009	Debtor. <i>See also</i> 11 U.S.C. § 350(a).
Material Misstatement of Income, Expenditures, or Assets (reported pursuant to an audit)	NA	Creditors in the case. <i>See</i> 28 U.S.C. § 586(f)(2).
Meeting of Creditors	FRBP 2002(a)(1), (i), (j).	1  Note: In chapter 11 cases, notice is issued to the equity security holders. Fed. R. Bankr. P. 2002(d)(2).
Meeting of Equity Security Holders	FRBP 2002(d), (i)	Equity Security Holders (Ch. 11 only), and any committee elected or appointed.
No Dividend / Do Not File Claims	FRBP 2002(e)	Included with notice of the meeting of creditors in all Chapter 7 cases.
Notice of Appeal	FRBP 8004	Counsel of record for each party, or, if a party is not represented by counsel,

		to the party's last known address.
Order of Confirmation of Chapter 13 Plan	NA	Unspecified. The Clerk's Office issues the confirmation order in a chapter 13 plan to the mailing matrix.
Order of Confirmation of Plan (Chapter 9, 12, or 11)	FRBP 2002(f)(7), 3020(c)	1  Note: Under Fed. R. Bankr. P. 3020, notice of the entry of the order of confirmation in a Chapter 11 case shall be mailed to the debtor, the trustee, creditors, equity security holders, other parties in interest, and, if known, to any identified entity subject to an injunction provided for in the plan.
Order of Relief	FRBP 2002(f)(1)	Included with the notice of the meeting of creditors.
Order of Relief in a Consumer Case	FRBP 2002(o)	Included with the notice of the meeting of creditors. This notice is co-extensive with Fed. R. Bankr. P. 2002(f)(1).
Order on Dismissal or Conversion of Case	FRBP 2002(f)(2)	1
Petition for Recognition of Foreign Proceeding and of Court Intention to Communicate with Foreign Courts and Foreign Representatives.	FRBP 2002(q), (k)	Debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under 11 U.S.C. § 1519, all parties to litigation pending in the U.S. in which the debtor is a party at the time of the petition filing, and such other entities as the court may direct, U.S. trustee.
Report of Fees Awarded During Proceeding Year	FRBP 2013(b)	U.S. trustee (the U.S. trustee for this District has informally waived the right to receive this report).
Schedules After Conversion	FRBP 1019(5)(D)	U.S. trustee (via NEF upon the filing of the schedules)
Statement under 11 U.S.C. § 704(b)(1) Regarding Abuse under § 707(b)	NA	Included with the notice of the meeting of creditors, or by separate notice if the means test is not filed with the petition. When issued separately, notice is to the debtor, all

		creditors, and indentured trustees.
Summons	FRBP 1010	Requesting Party
Suspension of a Proceeding under 11 U.S.C. § 305	FRBP 2002(f)(2)	1
Time Fixed for Filing a Complaint to Determine Dischargeability of a Debt	FRBP 2002(f)(5)	Included with the notice of the meeting of creditors
Time Fixed for Filing a Complaint Objecting to the Debtor's Discharge	FRBP 2002(f)(4)	Included with the notice of the meeting of creditors
Time for Allowing Claims Under FRBP 3002	FRBP 2002(f)(3)	Included with the notice of the meeting of creditors
Time to Request Administrative Expense Claim After Conversion	FRBP 1019(6)	Entities listed on the schedule of unpaid debts
Time to Request Delay in the Entry of Discharge under 11 U.S.C. § 1141(d)(5)(C), 1228(f), and 1328(h).	FRBP 2002(f)(11)	1
Waiver, Denial, or Revocation of Discharge as Provide In Rule 4006	FRBP 2002(f)(6), 4006	1 (all parties in interest under Rule 4006).

**g. Limiting and/or Shortening Notice**

1. The above tables illustrate the Clerk's Office common noticing practices as dictated by a Federal Rule of Bankruptcy Procedure or by local practice. For any particular document receiving notice, the party may file a motion with the document to limit and/or shorten the notice.
2. Authority to limit notice can be found, as applicable, in Fed. R. Bankr. P. 1001, 2002(i), 2002(m), 4001(b)(3), 6007, and 9007.
  - Fed. R. Bankr. P. 1001 provides that the Federal Rules of Bankruptcy Procedure are to "be construed to secure the just, speedy, and inexpensive determination of every case and proceeding."
  - Fed. R. Bankr. P. 2002(i) allows certain notices to be limited to committees that would otherwise be issued to all creditors in the case.
  - Fed. R. Bankr. P. 2002(m) generally allows the court to designate "the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules."
  - Fed. R. Bankr. P. 4001(b)(3) allows a limitation on the notice of a motion to use cash collateral.
  - Fed. R. Bankr. P. 6007 allows the court to limit the recipients of a

motion/notice of abandonment.

- Fed. R. Bankr.P 9007 provides that “[w]hen notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within in which, then entities to whom, and the form and manner in which the notice shall be given.”
3. Notices may be limited pursuant to the above rules, and motions to limit notice may include administrative matters analogous to the above rules.
  4. The court may grant a motion to limit notice ex parte, or, in appropriate circumstances, issue a notice on the motion or set the motion directly for hearing.
  5. Shortening a notice period is accomplished pursuant to Fed. R. Bankr. P. 9006(c). In general, “the court for cause shown may in its discretion with or without motion or notice order the period be reduced.” Exceptions to this general rule are set forth in Fed. R. Bankr. P. 9006(c)(2), and include:
    - The date and place for the meeting of creditors under Fed. R. Bankr. P. 2003(a)
    - Time fixed for filing proofs of claim under Fed. R. Bankr. P. 3003(c)
    - Time to modify a Chapter 13 plan after confirmation under Fed. R. Bankr. P. 3015
    - The commencement of a final hearing on the use of cash collateral under Fed. R. Bankr. P. 4001(b)(2) or to obtain post-petition credit under Fed. R. Bankr. P. 4001(c)(2).
  6. When shortening notice, careful attention must be paid to the number of days requested and the method by which the required notice recipients are to receive notice. For example, if notice is shortened to 10 days, and some of the required notice recipients are to receive notice by mail, then those mail recipients would have only a short period of time to file a response. Consider this timeline:
    - Day 1: the document and the motion to shorten notice to 10 days is filed at 5:00 pm.
    - Day 2: the motion to shorten notice is granted and the Clerk’s Office issues the notice.
    - Day 4, the BNC places the notice in the mail.
    - Day 7, the recipient receives the notice in the mail
    - Day 8, the recipient mails a response to the Clerk’s Office as instructed in the notice. A timely response must be received before the deadline because Fed. R. Bankr. P. 9006(f) does not apply to court issued notices.
    - Day 10, the notice period expires without objection
    - Day 11, the order proposed by the moving party is entered.

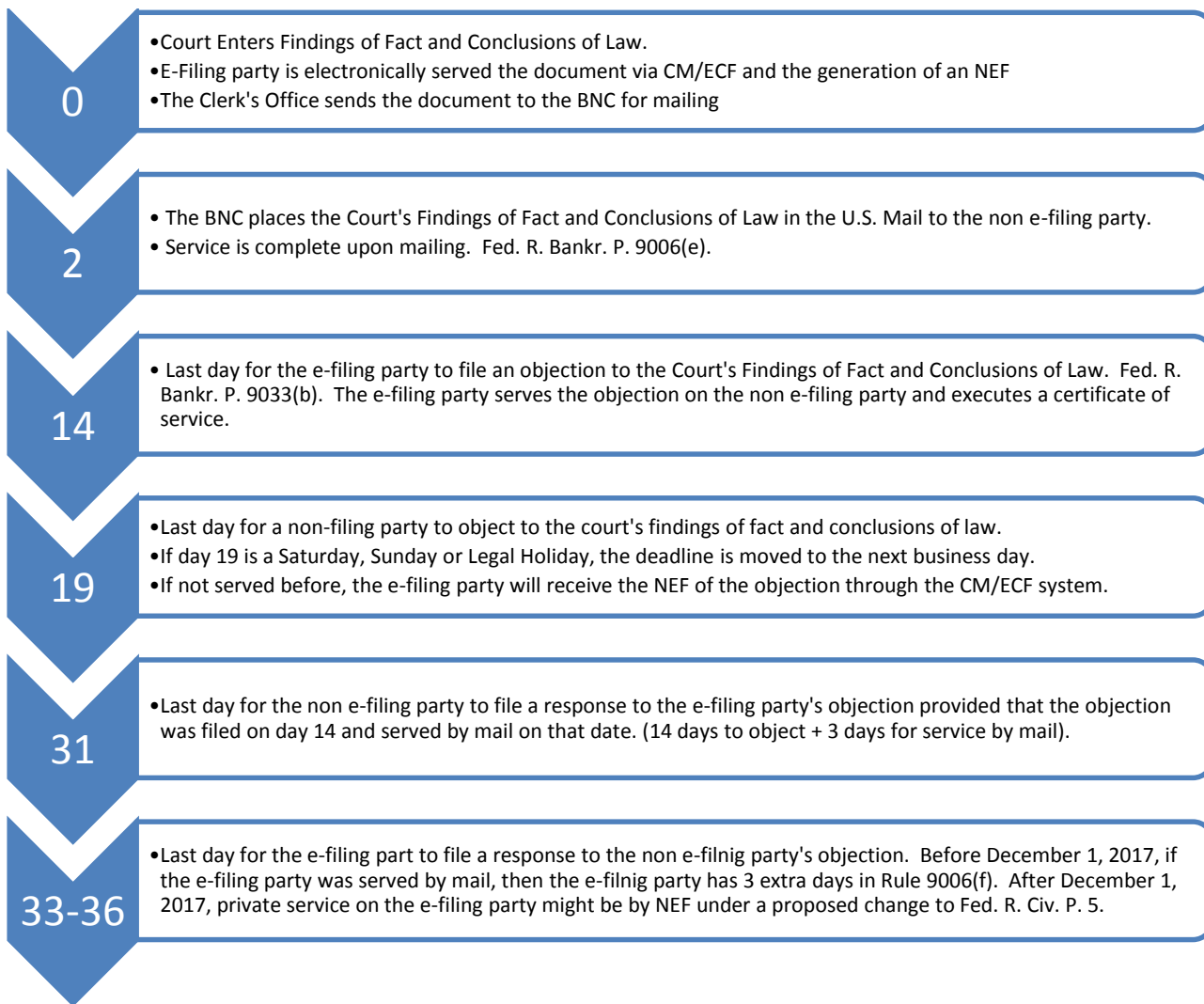
- Day 11, the notice recipient's response is received in the mail by the Clerk's Office.
7. The Clerk's Office requires the moving party to issue the notice when the notice period is being reduced to less than 10 days so that the 2-day delay caused by mailing from the BNC may be avoided.

**h. Noticing Fee Based Documents**

When a party files a document that requires the payment of a filing fee, and the party does not pay the required fee, the Clerk's Office may refuse to issue the required notice or schedule further proceedings on the document until such time as the fee is paid.

**i. Elimination of the 3-Day Rule for Non E-Filing Parties**

For a non e-filing party, i.e., a party receiving notice through the U.S. Mail, a case related deadline that runs from the date of service is extended by 3-days to account for mail delays. These three extra days are afforded by Fed. R. Bankr. P. 9006(f). On December 1, 2016, however, Rule 9006(f) was amended to eliminate a 3-day rule only for e-filing parties. Thus, when an e-filing party and a pro se party are in litigation, certain notice deadlines will have disparate termination dates. The below chart shows how such deadlines run for a court's findings of fact and conclusions of law, for which a party in a case has 14 day from service to file an objection, and then 14 days from service of the objection to file a response.



## **II. DETERMINING WHEN A DOCUMENT IS SET FOR HEARING, AND THE FORM OF THE HEARING**

### **a. Determining When a Filed Document is Set for Hearing**

#### **1. After Issuance of Notice**

By local rule, every document requesting relief is required to be filed with a proposed order that grants the relief requested. The Clerk's Office's notices specifically inform the notice recipients that:

A failure to timely file a written objection may result in the entry of an order that grants the relief sought in the document without further notice or hearing.

Thus, if no timely response or objection is filed with the Clerk's Office, the proposed order is sent to the presiding Judge for consideration. If the presiding Judge is satisfied, the proposed order is signed by the Judge and entered by the Clerk's Office. If the Judge is not satisfied or has questions regarding the proposed relief, the document is set for hearing. The hearing on the document may either be by telephone or in court and may be of either a preliminary or final nature.

A failure to comply with the local rule requiring proposed orders to accompany a document requesting relief causes delay, phone calls from the Clerk's Office, the potential that the underlying motion will be set for a court hearing, and/or a simple "grant" or "deny" order being prepared by the Clerk's Office that may not be optimal based on the circumstances of the case.

#### **2. Upon the Filing of a Response or Objection**

In the event an affected party files a timely response to a document, the underlying document is either adjudicated on the filed papers or set for a court hearing. Generally, motions in adversary proceedings such as motions to dismiss or for summary judgment are submitted on the papers without the need for oral argument unless specifically requested by the parties. On the other hand, in contested matters, the filing of a response generally results in the scheduling of a hearing.

#### **3. Set Directly for Hearing**

Some documents are set directly for a telephonic or in-court hearing without "negative notice." This can happen several different ways:

- Sometimes the document filed routinely garners responses (such as motions to dismiss Chapter 13 cases for non-payment) such that it becomes more

cost-effective and efficient to skip the “negative notice” procedure and move directly to a court hearing.

- Sometimes, the Clerk’s Office ascertains unusual requests in the document or proposed order. These are instances that come to the attention of the Clerk’s Office staff through the routine quality assurance of outside filings. On inquiry, the court may express a preference to set the motion directly for a hearing, or issue a “negative notice” to see if the document garners a response before the court acts sua sponte in setting the document for a hearing.
- Other times, the nature of the filed document requires that an immediate hearing be set. For example, a motion to extend the automatic stay under 11 U.S.C. § 362(c)(3)(B) must be quickly determined and insufficient time exists to allow for a “negative notice” procedure.

**b. Determining the Form of the Hearing (Telephonic or In-Court)**

The hearing may be telephonic or in court. A number of factors are considered in making this determination, including:

<b>Factors Weighing in Favor of a Telephonic Hearing</b>	<b>Factors Weighing in Favor of an In Court Hearing</b>
An undue length of time exists before the next regularly scheduled divisional court hearing date.	The document may be timely noticed for hearing at the next regularly scheduled divisional court hearing date.
One or more counsel or parties would have to travel an undue distance to attend an in court hearing.	All counsel and parties live in close proximity to the divisional courtroom, or will be in the courtroom on the appointed day for other business.
The purpose of the hearing is intended to be preliminary so that the court can ascertain the nature of the dispute, the necessity and time for completing discovery, the status of settlement discussions, and the nature and extent of the proposed evidence and testimony, etc.	The document is set for a final hearing that requires the presentation of evidence and/or testimony.
A document was filed that relates to another matter currently scheduled for a telephonic hearing.	A document was filed that relates to another matter currently scheduled for an in-court hearing.
All of the contesting parties are	One or more of the contesting parties is



attorneys.	pro se.
Whether the parties have an immediate need for relief not requiring evidence or testimony.	Whether the parties have an immediate need for relief that requires evidence or testimony (such as a preliminary injunction)
The document is one that is traditionally set for a telephonic hearing, such as a pre-trial conference or a preliminary hearing on a stay relief motion.	The document is one that is traditionally set for an in-court hearing, such as for adjudicating objections to confirmation of a Chapter 13 plan.
One or more parties specifically request a telephonic hearing.	One or more parties specifically request an in court hearing.
The court's divisional courtroom hearing calendar is full.	

In the Clerk's Office Survey, issued in July 2013, 93.5% of the respondents were satisfied or very satisfied with the method by which telephonic hearings were scheduled in lieu of court appearances.

### **III. ORDER PROCEDURES**

**a. Proposed Orders Submitted by the Moving Party**

1. By local rule, all documents filed with the Clerk's Office that request relief must be accompanied by a proposed order that grants the relief requested in the underlying document. Proposed orders should comply with the following guidelines:
  - All pages of a document, including attachments, shall be of letter size (8 1/2" x 11").
  - Text should not appear on both sides of a paper (i.e., no "two sided" pages);
  - If filed in paper at the Clerk's Office or by mail, the pages of a document should not be stapled or fastened together (except as by clips or other removable devices);
  - At the end of the proposed order, write the words "Prepared By" and include the attorney's mailing address, telephone number, and state bar number under the signature line.
  - Leave two inches of white space on the top of the first page of the proposed order for placement of the Judge's electronic signature.
  - When filed electronically, be free of embedded advertisements.
2. A failure to comply with the local rule requiring proposed orders to accompany a motion causes delay, phone calls from the Clerk's Office, the potential that the underlying motion will be set for a court hearing, and/or a simple "grant" or "deny" order being prepared by the Clerk's Office that may not be optimal based on the circumstances of the case.
3. Attorneys should avoid ordering relief that is not specifically requested in the document being granted. For example, if a document being granted requests a specific form of relief, such as the reclassification of a claim from secured to unsecured, the proposed order should reflect that treatment and not provide for the disallowance of the claim.
2. Although the local rule requires proposed orders to accompany any document requesting relief, some orders are routine in nature and the Clerk's Office will use its own form order in lieu of any proposed order submitted by an attorney; consequently, in these instances no need exists for an attorney to prepare the proposed order. These instances include, but are not limited to:
  - Order on amended schedules
  - Order closing Chapter 7 or 13 case
  - Order continuing hearing
  - Order of conversion of case (from any chapter to any chapter)
  - Order restricting public access
  - Order on wage withholding

**b. Orders Prepared by Chambers**

1. The chambers of the presiding judge prepares orders and memoranda opinions resulting from contested matters or adversary proceedings that are taken under advisement.
2. Judgments in adversary proceedings must be entered by a separate document that is apart from the opinion or memorandum of the court. Fed. R. Civ. P. 58(a) (“Every judgment and amended judgment must be set out in a separate document [with certain exceptions].”); Fed. R. Bankr. P. 7058 (making Civil Rule 58 applicable to bankruptcy proceedings); Fed. R. Civ. P. 54(a) (listing the requirements for the form of a judgment); Fed. R. Bankr. P. 7054 (making Civil Rule 54 applicable to bankruptcy proceedings). The reason behind the “separate document” requirement is to clarify when the time for taking an appeal begins to run, and is designed to alleviate the problems that arise when the court’s opinion includes seemingly dispositive language, which may or may not constitute an entry of judgment that triggers the time for filing an appeal. *Hughes v. Halifax County School Bd.*, 823 F.2d 832, 834-35 (4<sup>th</sup> Cir. 1987).
3. When a judgment in an adversary proceeding is not set forth in a separate document, the judgment is deemed entered after 150 days have run from the entry of the court’s opinion, memorandum, or order & reasons on the civil docket. Fed. R. Civ. P. 58(c)(2)(B). The deadline for filing an appeal of the bankruptcy court’s opinion or memorandum therefore expires 14 days after entry of judgment. Consequently, under Rule 58(c)(2)(B), when the court or clerk does not enter a separate judgment, the time to appeal expires 164 days after entry of the court’s opinion or memorandum. Fed. R. Bankr. P. 8002(a).
5. Regarding non-adversary proceedings, under Fed. R. Bankr. P. 9021, “[a] judgment or order is effective when entered under Rule 5003.” This Rule was amended in 2009 to specifically separate it from the requirements of Fed. R. Bankr. P. 7058 (Advisory Committee Note to the 2009 Amendment). Rule 5003 does not require that a judgment be set forth on a separate document; consequently, the court may combine the order and reasons for the order in a single document in non-adversary proceedings. However, Fed. R. Civ. P. 54 does apply in contested matters pursuant to Fed. R. Bankr. P. 7054, 9014. Consequently, when a judgment is entered by the court or clerk, the judgment has certain form requirements. Importantly, however, when a judgment is entered in a contested matter, Fed. R. Bankr. P. 9014 incorporates Fed. R. Bankr. P. 7054, which has specific requirements for the form of a judgment such that a separate order is likely required.

**c. Orders Entered by the Court Ex Parte**

1. Because bankruptcy is largely administrative in nature, the vast majority of court orders are entered without notice or hearing. Some orders are entered even without any document being filed by a party. Sometimes these orders could just as easily be notices issued in the name of the Clerk without entry of a court order.
2. Generally, when the court grants, *ex parte*, an order submitted by a party as opposed to the Clerk's Office, it is because the order must be entered quickly (such as a motion to continue a hearing), because it is committed to the court's discretion (such as granting an application to pay fees in installments), or because the order is subject to later modification (such as a motion to allow direct plan payments).
3. Importantly, although some orders may be entered *ex parte*, that does not mean that the court or Clerk's Office won't set the underlying document for hearing, or issue notice as each case is unique.
3. The types of orders that the court enters *ex-parte* are those based on documents filed by parties listed in Part I(f)(7), *supra*.

**d. Orders Entered by the Clerk's Office By Delegated Authority**

1. Given the administrative and routine nature of bankruptcy proceedings, and considering the wise allocation of judicial resources, the court has delegated certain signature authority to the Clerk's Office to enter specific orders. The form of each order is reviewed and approved by the court: the Clerk's Office does not have authority to alter or amend the substance of the specific orders without submitting the order for the signature of the presiding judge. In some cases, the document is captioned "order" but the document may actually be a notice that could be issued by the Clerk's Office. These orders include, but are not limited to:
  - Order and Notice for Hardship Discharge
  - Order and Notice for Hearing on Disclosure Statement
  - Chapter 11 Operating Order
  - Order Following Deficiency Notice for Failure to Correct Reaffirmation Agreement
  - Order to Show Cause Why Entry of Discharge Should Not Be Denied
  - Conversion Orders (any chapter to any chapter)
  - Order Setting Chapter 11 Scheduling Conference
  - Discharge of Debtor (Chapter 7, 12, 13 and Individual Ch. 11)
  - Order Denying Entry of Discharge
  - Final Decree Closing Bankruptcy Case and Discharging Trustee
  - Final Decree Closing Bankruptcy Case and Discharging Trustee Without Entry of Discharge
  - Order that Business Entities Must be Represented by an Attorney

- Order Sustaining Debtor's Objection to Wage Withholding
- Order to Commence Wage Withholding
- Order Deeming Chapter 13 Plan Deficient
- Order Directing Chapter 13 Debtor to Make Plan Payments Directly to the Trustee
- Order and Notice Setting Preliminary Hearing on Stay Relief
- Order Setting Final Hearing on Stay Relief
- Order Granting Stay Relief Filed by Debtor to Allow Creditor Billing
- Order Abandoning Property
- Order RE: Notices and Deadlines for Amended Schedules
- Order Denying § 522(f) Motion for Failure to Conform to Local Form
- Order Denying Motion to Reopen to Add Creditors in No Asset Chapter 7 Case
- Order Scheduling a Hearing on a Pending Matter
- Order Amending Schedules
- Order Assigning Case to the Bankruptcy Court of the Southern District of West Virginia
- Order Closing Case
- Order Granting Motion to Change Venue
- Order Continuing Hearing
- Order Allowing Filing Fees to Be Paid in Installments
- Order Granting IFP Status
- Order Setting Case for Hearing When Debtor Fails to Submit Proof of Financial Management
- Order Setting Show Cause Hearing on Credit Counseling
- Order Requiring the Payment of the Fee for Amended Schedules
- Order Sealing Document following a Motion to Redact
- Order Deferring Fees for Chapter Trustees

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