

BANKRUPTCY JUDGES ADVISORY GROUP
OF THE
ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Honorable Bruce W. Black, Northern District of Illinois
Honorable Mildred Caban, District of Puerto Rico
Honorable Thomas J. Catliota, District of Maryland
Honorable George W. Emerson, Western District of Tennessee
Honorable Mary D. France, Middle District of Pennsylvania
Honorable Martin Glenn, Southern District of New York
Honorable Laurel M. Isicoff, Southern District of Florida
Honorable Thomas L. Saladino, District of Nebraska
Honorable Robert R. Summerhays, Western District of Louisiana
Honorable S. Martin Teel, Jr., District of DC
Honorable Gregg W. Zive, District of Nevada

Honorable Janice Miller Karlin, Chair
U.S. Bankruptcy Court
Frank Carlson Federal Building &
United States Courthouse
444 Southeast Quincy Street, Room 215
Topeka, KS 66683

August 13, 2015

Honorable Jeffrey S. Sutton
Chair, Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE, Suite 7-240
Washington, DC 20544
(VIA EMAIL at Rules_Support@ao.uscourts.gov)

Dear Judge Sutton:

The Administrative Office's Bankruptcy Judges Advisory Group (BJAG), the Bankruptcy Clerks Advisory Group (BCAG) and the Bankruptcy Noticing Working Group (Noticing Group) request an amendment to Rule 9036 of the Federal Rules of Bankruptcy Procedure to require large-volume bankruptcy notice recipients to receive notices electronically rather than by U.S. mail. This proposed rule change is consistent with the present-day shift toward electronic communications, which is largely motivated by a desire for greater economy and more efficiency.

Bankruptcy Rule 9036, which became effective in 1993, enables an entity to elect to receive notices electronically. The Committee Note explains that Rule 9036 was "added to provide flexibility for banks, credit card companies, taxing authorities, and other entities that ordinarily receive notices by mail in a large volume of bankruptcy cases, to arrange to receive by electronic transmission all or part of the information required to be contained in such notices." Twenty-two years have passed since Rule 9036 was enacted, and electronic transmission of

information has become a mainstream staple of commerce. As such, we believe it is time to revise Rule 9036 with respect to large-volume notice recipients.

The U.S. Courts' Bankruptcy Noticing Center (BNC) produces and sends notices on behalf of all bankruptcy courts. The BNC supports the Electronic Bankruptcy Noticing (EBN) Program, through which a creditor or other entity can register to receive court-generated notices electronically. Through EBN, the BNC transmits court-generated notices electronically on the same day they are issued by the courts. This results in notices being delivered days faster than those sent by U.S. mail. **As of June 30, 2015, electronic noticing accounted for 38.4% of all notices sent through the BNC, and it yielded the judiciary a postage savings of close to \$10 million in fiscal year 2014.**

The BNC offers notice recipients a variety of electronic noticing options via its EBN program. Four nationally standardized bankruptcy notices can be sent via Electronic Data Interchange (EDI), an electronic file format that supports the automated transmission and extraction of case data from notice files. The BNC also supports the electronic transmission of all bankruptcy court notices by email or facsimile. Additionally, in 2013, the BNC began supporting Extensible Mark-up Language (XML) as an enhancement to EBN email. Through XML, an email recipient can extract case data, such as the debtor's name and case number, from PDF notices sent to them. XML uses relatively simple, publicly available technology which enables its recipients to both automate data processing and archive the document image.

EBN growth has steadily increased over the years, and the judiciary has benefited from the cost savings. However, many high-volume notice recipients fail to enroll in EBN. Others choose a hybrid EBN/U.S. mail option whereby the four standardized notice types are transmitted using EDI technology and all others are printed and mailed. Twenty-three of the top 50 U.S. mail notice recipients in the country use this hybrid system. These entities have invested greatly in EDI technology and are clearly savvy financial stakeholders in the bankruptcy system, yet they receive the bulk of their notices in paper.

Entities that receive 100 or more notices per month include national banks, credit reporting agencies, collection agencies, department stores, federal and state agencies, utility companies, loan servicing companies, and telecommunication companies, to name a few. Those that fall within this noticing volume threshold are sophisticated businesses and organizations capable of handling email.

After reviewing statistics related to EBN growth and judiciary noticing costs during its spring 2014 meeting, the Noticing Group resolved to pursue mandatory electronic bankruptcy noticing for high-volume notice recipients. In the fall of 2014, the Noticing Group gained support for the concept from the BJAG and BCAG.

Since that time and at the suggestion of the BJAG, the Noticing Group's Administrative Office support staff has reached out to 89 entities that would be affected by this rule change. Out of the ten responses received, no entity opposed the proposed rule change or concept of mandatory electronic noticing. In fact, most responding parties asked for more information on the BNC's electronic noticing options in order to consider EBN registration in the immediate future. An executive from one organization, in particular, commented on how much staff time and resources would be saved from shifting to an electronic-only noticing solution.

At its March and May 2015 meetings, the BCAG unanimously supported mandatory EBN and approved the attached proposed amendment. In April, the BJAG again considered the concept of mandatory EBN and also agreed to support the proposed amendment to Rule 9036.

Under the concept of mandatory electronic noticing endorsed by the three groups, Rule 9036 would require enrollment in EBN for all entities that have been sent 100 or more court-generated notices by U.S. mail within a calendar month. The Administrative Office Director or the Director's noticing agent would notify the entity that it: (1) has reached the threshold for mailed paper notices; (2) is required to enroll in the EBN program within 45 days of the date of the notice; and (3) must be prepared to accept all court-generated notices by electronic transmission within 135 days of the date of the notice.

If an entity does not timely enroll in EBN, the Director or the Director's noticing agent would notify the entity that: (1) timely enrollment has not occurred; (2) court-generated notices will be sent to an electronic account created by the BNC, beginning 30 days from the date of the notice; (3) the entity may access the electronic account by following instructions set forth in the notice; and (4) failure to timely enroll in EBN constitutes a waiver of the right to receive court-generated notices by mail with the exception of the 341 notice and notices in adversary proceedings.

Mandatory electronic bankruptcy noticing for entities sent 100 or more court notices within a given month will result in approximately \$6 million of annual cost savings for the judiciary. This savings estimate is based on BNC notice production data from periods within 2013 and 2014, years with significant declines in bankruptcy case filings. Savings are certain to increase during years with more normalized bankruptcy filings.

Thank you for your consideration of the proposal to mandate electronic noticing for high-volume bankruptcy notice recipients and the proposed amendment to Bankruptcy Rule 9036. If you have concerns about our recommendation or would

like to review supporting documentation regarding our analysis and outreach efforts, please let us know.

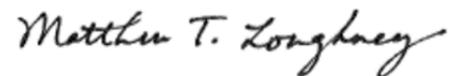
Sincerely,



Janice M. Karlin
Chair, Bankruptcy Judges Advisory Group
Judge, U.S. Bankruptcy Court for the District of Kansas



Lee Ann Bennett
Chair, Bankruptcy Clerks Advisory Group
Clerk, U.S. Bankruptcy Court for the Middle District of Florida



Matthew T. Loughney,
Chair, Bankruptcy Noticing Working Group
Clerk, U.S. Bankruptcy Court for the Middle District of Tennessee

cc: Danny C. Reeves, Chair, Committee on the Administration
of the Bankruptcy System
James C. Duff, Director, Administrative Office of the U.S. Courts
Laura Minor, Associate Director, Department of Program Services
Michele Reed, Chief, Judicial Services Office
Mary Louise Mitterhoff, Chief, Court Services Office

Rule 9036. Notice by Electronic Transmission

(a) Voluntary Electronic Noticing. 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.~~

(b) Mandatory Electronic Noticing. Notwithstanding § 342(e)-(g) of the Code, Rule 5(b) F.R.Civ.P., and Rules 2002(g) and 9022(a), the first time an entity is sent 100 or more court-generated notices by mail from one or more courts within a calendar month and is so notified, the entity will be required to enroll in Electronic Bankruptcy Noticing and thereafter accept delivery of all court-generated notices by electronic transmission, as provided in subparagraphs (b)(1)-(3) of this rule.

(1) Threshold Notice. The Director of the Administrative Office of the U.S. Courts or the Director's noticing agent may give notice of the threshold to any entity exceeding the monthly limit for mailed notices. The notice will advise the entity that the threshold for mailed notices has been exceeded and will advise the entity of the requirements in subparagraphs (b)(2)-(3) of this rule.

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

(3) Commencement of Electronic Noticing.

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

(B) Unenrolled Entities. For entities that do not timely enroll in Electronic Bankruptcy Noticing, the Director of the Administrative Office of the U.S. Courts or the Director's noticing agent may give notice to the entity that: (1) timely enrollment in Electronic Bankruptcy Noticing has not occurred; (2) beginning 30 days from the date of the notice, court-generated notices will be

sent to an electronic account created by the U.S. Courts' Bankruptcy Noticing Center; (3) the entity may access that electronic account by following instructions contained in the notice; and (4) failure to timely enroll in Electronic Bankruptcy Noticing constitutes a waiver of the right to receive court-generated notices by mail with the exception of the notice required under Rule 2002(a)(1) and notices in cases commenced under Rule 3 F.R.Civ.P.

(c) Notice by electronic means, referred to in paragraphs (a) and (b), is complete on transmission.

**BANKRUPTCY JUDGES ADVISORY GROUP
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Honorable Bruce W. Black, Northern District of Illinois
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Honorable Mildred Caban, District of Puerto Rico
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Honorable Robert R. Summerhays, Western District of Louisiana
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Honorable Janice Miller Karlin, Chair
U.S. Bankruptcy Court
Frank Carlson Federal Building &
United States Courthouse
444 Southeast Quincy Street, Room 215
Topeka, KS 66683
785-338-5950

November 9, 2016

Honorable David G. Campbell
Chair, Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE, Suite 7-240
Washington, D.C. 20544
(VIA EMAIL at Rules_Support@ao.uscourts.gov)

Dear Judge Campbell:

We write to you in our capacities as Chair of the Bankruptcy Judges Advisory Group, Bankruptcy Clerks Advisory Group, and Bankruptcy Noticing Working Group, respectively. By letter dated August 13, 2015, we wrote to Judge Jeffrey S. Sutton, then Chair of the Committee on Rules of Practice and Procedure (Committee), suggesting an amendment to Federal Rule of Bankruptcy Procedure 9036.¹ That letter is attached for your reference and more fully explains our suggested amendment and the bankruptcy courts' Electronic Bankruptcy Noticing program. In brief, the amendment to Rule 9036 would require large-volume bankruptcy notice recipients to receive notices electronically rather than by U.S. mail.² As detailed below, this would save the Judiciary a great deal of money while continuing to ensure the timely and secure delivery of bankruptcy notices.

¹ See [Rules Suggestion 15-BK-H](#). Matthew Loughney signed the letter on behalf of the Bankruptcy Noticing Working Group as its then Chair.

² Any party receiving 100 or more notices within a given month would be subject to the amendment's mandatory electronic notice provisions.

As of June 30, 2016, electronic noticing accounted for approximately 39% of all notices sent through the U.S. Courts' Bankruptcy Noticing Center (BNC), and it yielded a postage savings of close to \$8.7 million in fiscal year 2015. Based on BNC production data, mandatory electronic bankruptcy noticing for entities sent 100 or more notices within a given month would have resulted in approximately \$3.95 million of cost savings for the Judiciary in fiscal year 2016 alone. Given that filing year 2016 is on pace to see the second-lowest filings for a calendar year since 1990, it is easy to conclude that savings from mandatory electronic noticing for high volume creditors would be far greater in years with more normalized filing rates.

The suggested amendment to Rule 9036 was assigned to the Advisory Committee on Rules of Bankruptcy Procedure (Advisory Committee) which, in turn, assigned it to its Subcommittee on Business Issues (Subcommittee). The Subcommittee considered the suggestion along with several other noticing-related suggestions at its March 2016 meeting, and then recommended that the Advisory Committee defer consideration of any specific electronic noticing suggestion until the Advisory Committees on Civil and Criminal Rules (Civil and Criminal Advisory Committees) completed work on proposed amendments to their noticing rules.

We believe our suggested amendment should not be delayed. The amended rules that the Civil and Criminal Advisory Committees are considering would allow electronic service only on registered users of the courts' electronic filing systems (Registered Users). That proposal is separate from whether to require large-volume paper notice recipients to receive their notices electronically in bankruptcy cases. This is because the proposed rules revisions in the Civil and Criminal Committees would not cover the unregistered parties in bankruptcy cases that receive almost all of the paper notices. Therefore, even if electronic service on Registered Users were allowed, as it would be under the rules amendments that the Civil and Criminal Committees are considering, our suggested revision would still be necessary.

The arguments made in our previous letter in support of our suggested amendment to Rule 9036 remain valid and pertinent today. We urge the Committee and the Advisory Committee to resume considering the amendment and to do so separately from unrelated noticing suggestions, because every month of delay results in lost savings to the Judiciary. If you would like to discuss this further, please contact any of us.

Sincerely,

A handwritten signature in cursive script that reads "Janice M. Karlin". The signature is written in black ink and is positioned above the typed name.

Janice M. Karlin
Chair, Bankruptcy Judges Advisory Group
Judge, U.S. Bankruptcy Court for the District of Kansas



Lee Ann Bennett

Chair, Bankruptcy Clerks Advisory Group

Clerk, U.S. Bankruptcy Court for the Middle District of Florida



Eva Roeber

Chair, Bankruptcy Noticing Working Group

Chief Deputy, U.S. Bankruptcy Court for the District of Nebraska

Attachment

cc: Hon. Karen E. Schreier, Chair, Committee on the Administration
of the Bankruptcy System
Hon. Sandra Segal Ikuta, Chair, Advisory Committee on Bankruptcy Rules
James C. Duff, Director, Administrative Office of the U.S. Courts
Laura Minor, Associate Director, Department of Program Services
Michele Reed, Chief, Judicial Services Office
Mary Louise Mitterhoff, Chief, Court Services Office
Rebecca Womeldorf, Rules Committee Officer, Office of the General Counsel

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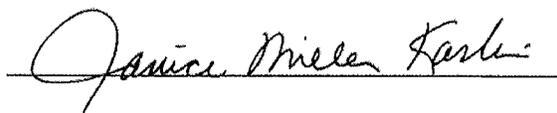
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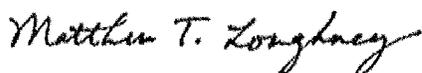
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