

How to Save Time and Money Doing Bankruptcy Noticing

by Joe Speetjens



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A bankruptcy notice is a key document that must be handled with care and quickly completed. In this article we will discuss bankruptcy noticing and outline a number of legal and practical best practices to help you process your notice efficiently—saving you, and your clients, time and money. However, it is important to keep in mind that courts across the country have a wide variety of practices and rules, and you should consult your local clerk’s office for specific local rules.

Notice Preparation

Even though the courts perform most of the noticing, there are situations where the attorney or trustee must perform this tedious task. It could be as small as a motion or as large as a claims bar date notice in a megacase. In either situation, there are both legal and practical aspects to consider when preparing a bankruptcy notice. The legal aspects are beyond the scope of this article, but the practical aspects can be addressed by applying best practices. For example, one must consider practical aspects such as notice readability and document size. While it is tempting to reduce the number of pages in your notice to minimize postage costs, this may not be acceptable to the court. Attorneys have been forced to redo notices deemed “too difficult to read” after they attempted to fit too much information onto one page by squeezing multiple pages into one. In short, minimize extra space where appropriate, but make sure the notice remains legible. Here are a few simple tips:

- Avoid fonts smaller than 10 points to ensure your text is easy to read.
- A certificate of service and a copy of the Public Access to Court Electronic Records (PACER) mail matrix in label format adds weight to a notice and may unnecessarily increase your postage costs. Noticing services will prepare a certificate of service that contains both the notice copy and the mailing list for you for docketing. An alternative is to retrieve the mail matrix list in “raw text” format from PACER. This can then be formatted to take less space than the “labels” option.

- Be aware that the docketing process often triggers the timing of calendar events within the court, so be sure to docket the day your notice mails and not before.
- If you scan documents, use a resolution between 300 and 600 dpi. Documents with a resolution lower than 300 dpi will appear dull when printed; however, using a resolution higher than 600 dpi creates unnecessarily large files and offers a negligible difference in print quality.

The Mail Matrix

The next question to address is “To whom are you sending the notice?” That answer depends upon the type of notice, but the choices typically include:

- An in-house maintained address list—such as a trustee’s payee list or a chapter 11 megacase
- The court’s mailing matrix from PACER
- A portion or modification of either

Business mail is typically sent in windowed envelopes. Usually this means that the document’s address is printed using some form of mail merge process between the notice template and a database. A similar function would be desirable for bankruptcy noticing; however, notice layouts are not consistent enough for windowed envelopes. Accordingly, it is standard practice to use the court’s mail matrix to print out labels and manually add them to the envelope. This method has worked well in the past, but the quality of address information in the mail matrix has deteriorated.

The mailing matrix often has duplicate and undeliverable addresses that will result in returned mail. When the court receives an updated address they often add a new record—instead of editing the old address—or they will delete the address and leave the name. If the name is left, it is considered undeliverable by the court’s noticing service—but a reference to it is maintained on the certificate of notice as “bypassed.” If the whole address record is left untouched, it will likely result in returned mail. You can save some postage by reviewing the label document for obvious

duplicates and only sending mail once to a recipient and not to incomplete addresses.

Additionally, it is unnecessary to send the notice to the debtor's attorney, who is included in the mail matrix, since they receive it by email as a notice of electronic file (NEF) from the court's case management/electronic case filing system. The court's mail matrix does not designate any NEF recipients. However, the bankruptcy filer's certificate of service should reflect that the NEF method of delivery was used.

Several years ago the court's PACER system was upgraded with the ability to retrieve the mail matrix in "raw text" format. If you don't see this option on your court's PACER system, ask the clerk's office to enable it. "Raw text" is a text file with vertical bars placed between address fields. If you need to manipulate the mail matrix, this file can be easily imported into a spreadsheet for editing. After you import the text file, perform a "text to columns" operation and specify the delimiter. Having it in a data format allows you, or your service provider, to do duplicate checking, make zip+4 additions, and otherwise perform data processing on the address to improve delivery.

Many attorneys are concerned with mailing to the "preferred address" for creditors. The court matrix retrieved from PACER is the best method for determining the creditor's preferred address. Just prior to display on PACER, each mail matrix is matched against the court's centralized National Creditor Registration Service database. The addresses filed with the court (from the petition or proof of claim) are compared to the list provided by the creditor. If a match is found, the preferred address is provided using labels or raw text mode. In labels mode, the original address is provided in a separate section in addition to the preferred address. Do not use this label or include it as part of a service list.

Certificate of Service Preparation and Filing

The filing of documents on the case docket will trigger either one or two events:

1. An NEF email sent by the court's case management/electronic case filing system to a predetermined list of users, which typically includes the debtor's attorney.
2. The triggering of a deadline. Depending on the type of bankruptcy notice, filers may be required to adhere to court-specific submission deadlines. It is critical that filers consider these deadlines to ensure notice recipients have timely notification and receive the court-required documentation, or certificate of service, to demonstrate you've properly executed your bankruptcy notice.

There are often local rules that require specific content be included in the certificate of service. If you use a service provider, make sure they provide a conforming document.

Time Sensitivity

As previously mentioned, filing a bankruptcy notice with the court may trigger events that require you to build in extra time for your scheduled notice delivery. If you can, file the certificate of service with a copy of the notice once the document has been mailed.

You can mitigate delivery delays by using a print-and-mail service that specializes in bankruptcy noticing. Creditors are located all over the country, and an advantage of an outsourced service is their investment in postal processing software. Capitalize on this advantage, and get the fastest delivery times, by choosing a service that will place the postal barcode on the envelope and conform to U.S. Postal Service automated mail procedures.

DIY or Outsource

Lastly, decide who is going to do the work: you and your staff or a service provider? Is your time best spent doing manual back office tasks or legal work? It's also important to consider your employee morale and the effective use of your employee's time as you evaluate an outsource alternative. That is why many businesses opt to hire professional noticing services to assist in this process. The Administrative Office of the U.S. Courts maintains a list of approved noticing providers online.¹ It's important to note, however, that many of the providers have particular areas of focus such as small rush jobs or chapter 11 cases in conjunction with claims services. These services vary in cost. When reviewing service options you should consider cost, timeliness, ease of use, reliability, and range of service.

Summary

While noticing is not the main focus of your case, judges and clerks consider it an important aspect in expediting your bankruptcy case. A little knowledge and planning can vastly improve the process for all parties. ☺

Endnotes

¹See Approved Bankruptcy Notice Providers, U.S. COURTS, <http://www.uscourts.gov/services-forms/bankruptcy/approved-bankruptcy-notice-providers> (last visited Oct. 10, 2016).

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