



Court News and Views

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Clerk's Corner
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Hello, everyone! Happy Fall! Thank you for reading the 24th edition of our newsletter!

Highlights from this edition: Judge Hawkins wrote our opening article (page 2), *Complying with Notice and Service Requirements*. Read this for a good primer on notice and service in your practice. Sabrina McKinney gives everyone an update on the Chapter 13 Trustee's website and reminds you of some of the resources available in her office. We also provide you with a number of helpful practice tips and give you a summary of bankruptcy rule changes going into effect on December 1, 2023. Finally, we close with a Save the Date notice for our fall attorney forums. Please mark your calendars so you are sure to attend!

Potential government shutdown: the hot topic right now in the Judiciary (and in the government as a whole) is the potential government shutdown that is looming. While there are several possible scenarios, at the end of the day, we will continue to operate the bankruptcy court through any potential shutdown.

Local rules update: our proposed local rules changes have recently been sent to the Eleventh Circuit for approval. In the meantime, please continue to abide by our current local rules as written and all current chambers procedures.

Filing numbers: our filing numbers are on the same trend we have been seeing for a while now. Our numbers are still up from last year's numbers (up about 8% from last year, year-to-date through October 20, 2023) but down for the same time in 2019 before Covid (down about 32%).

Training: we have been seeing a trend of more submission errors lately. There may be many reasons for that, but one thing that could help stop the trend is training. We have not had too many requests for office training since we returned to the office from Covid. We can provide tailored training for your staff—whether it be for new staff or refresher training for those who have been around for a while. Please call us at (334) 954-3800 and ask for Brian Suckman to schedule this training.

Tonya Hagmaier retires: our fantastic chief deputy, Tonya Hagmaier, is retiring in late January of 2024. After a phenomenal career as a judge advocate (JAG) in the Air Force, she has been with us for almost 10 years. She helped us make huge strides in all areas of the office. We are very happy for her as she begins her well-deserved retirement!

Feedback: as always, please continue to reach out to us with any questions or feedback you have. You can call us directly at (334) 954-3800 or email us at feedback@almb.uscourts.gov.

Complying with Notice and Service Requirements

Christopher Hawkins, U.S. Bankruptcy Judge

Chief Judge Creswell and I recently submitted the proposed amended Local Bankruptcy Rules for the Middle District to the United States Court of Appeals for the Eleventh Circuit. Upon approval by the Eleventh Circuit, these rules will be adopted by administrative order and will take effect in our district. As discussed at our attorney meetings earlier this year, the proposed amended Local Bankruptcy Rules significantly expand the scope of matters covered by negative notice, including, without limitation: certain claim objections, settlements, motor vehicle insurance, lien avoidance, fee applications, and plan modifications. This expanded scope is designed to save practitioners time and streamline the Court's dockets. However, with this expanded scope comes the increased risk of orders being entered without a hearing when affected parties have not received proper notice and, as applicable, proper service. Compliance with applicable notice and service requirements is essential to affording parties due process, and heightened scrutiny will come with the expansion of the Court's negative notice procedures.

With respect to service, Rule 7004 of the Federal Rules of Bankruptcy Procedure (hereinafter, the "Bankruptcy Rules") applies not only to adversary proceedings but also to objections to claims and other contested matters, as set forth in Bankruptcy Rule 9014(b). Moreover, certain types of parties require special forms of service. For example, when the United States is a party, Bankruptcy Rule 7004(b)(4) requires service by mail on the Attorney General of the United States and the civil process clerk at the office of the United States Attorney for the district. [Mailing addresses](#) for the Attorney General and United States Attorney are maintained on the Court's website for the convenience of attorneys practicing before the Court.

Likewise, when an officer or agency of the United States is a party, Bankruptcy Rule 7004(b)(5) requires service **not only** on the United States Attorney for the district and the United States Attorney General, **but also** on the applicable officer or agency. A list of [mailing addresses](#) for numerous federal agencies – including the Internal Revenue Service, the Department of Education, the Department of Veterans Affairs, the Department of Agriculture, and the Small Business Administration – is maintained on the Court's website.

Bankruptcy Rule 7004(b)(6) provides guidance with respect to service on states, municipal corporations, or other governmental organizations thereof. Movants must mail their papers to the person or office upon whom process is prescribed to be served by the law of the state in which service is made. For the convenience of the bar, the Court's website lists [mailing addresses](#) for state agencies and officers that often are parties in bankruptcy cases.

Practitioners also should be mindful of special service requirements when the affected party is an "insured depository institution," as defined by section 3 the [Federal Deposit Insurance Act](#). Bankruptcy Rule 7004(h) requires service by **certified mail** to an officer of the institution unless: the institution has appeared by its attorney, the court orders otherwise after initial notice has been provided to the institution by certified mail, or the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

When serving a domestic or foreign corporation or a partnership or other unincorporated association, Bankruptcy Rule 7004(b)(3) requires movants to mail their papers to the attention of an officer, mailing or general agent, or to any other agent authorized by appointment or by law to receive service of process. Bankruptcy Rules 7004(b)(3) and 2002(g) intersect here, as case law indicates that the address designated in the proof of claim for notices can be considered the proper address for purposes of service under Bankruptcy Rule 7004(b)(3). If an attorney has filed a notice of appearance on behalf of a party, service on that attorney **may** be sufficient under Bankruptcy Rule 7004(b)(3), but it likely depends on the specific wording of the notice of appearance and the involvement of the attorney in the case. For this reason, the safer approach is to serve both the party and the attorney that has appeared in the case on behalf of that party. In any event, it is essential that with each paper they file, movants review the docket and the claims register in the case to ensure proper addresses are used.

The concept of notice is separate from – but goes hand in hand with – the concept of service. Notice typically relates to general matters concerning all parties in a case, whereas service typically relates to a party specifically impacted by a motion. However, due process requires that notices make it to the proper address in a timely manner, and failure to provide proper notice under Bankruptcy Rule 2002 could lead to adverse consequences, particularly for a debtor. For example, a failure to include or update proper addresses in the list of creditors could impact the debtor's ability to bind creditors to a confirmed plan or to disallow claims not filed by the bar date. Accordingly, it is incumbent upon debtor's counsel to update information by reviewing the addresses listed in proofs of claim, transfers of claim, and notices of appearance to ensure that notice is sufficient.

Complying with Notice and Service Requirements Continued

Bankruptcy Rule 9036 incorporates certain aspects of CM/ECF and [Electronic Bankruptcy Noticing](#) into notice and service requirements. Without limitation, Bankruptcy Rule 9036(b)(1) provides that when a rule permits notice or service by mail, the clerk may send notice to or serve a registered user by filing the notice or paper with the court's electronic filing system. Under Bankruptcy Rule 9036(b)(2), for any recipient, the clerk may send notice or serve a paper by electronic means that the recipient consented to in writing, including by designating an electronic address for receipt of notices, provided that an electronic address the recipient registered with the Administrative Office of the United States Courts' bankruptcy noticing program will take precedence, and further provided that if an entity has been designated by the Administrative Office as a high-volume paper notice recipient and such recipient has not designated an address under 11 U.S.C. § 342(e) or (f), the address designated by the Administrative Office will take precedence. Bankruptcy Rule 9036(c) permits entities to send a notice or serve a paper in the same manner as the clerk only with respect to registered users under Bankruptcy Rule 9036(b)(1). Perhaps most importantly, Bankruptcy Rule 9036(e) specially excludes papers required to be served under Bankruptcy Rule 7004 from any electronic noticing methods. Accordingly, service by mail will be required with respect to any contested matters subject to Bankruptcy Rule 7004.

This article covers some of the highlights of Bankruptcy Rules 2002 and 7004, but it is by no means an exhaustive treatise on notice and service. In connection with the proposed amended Local Bankruptcy Rules, practitioners will be required to file declarations in support of entry of orders on negative notice. The declaration requires nothing more than what the law already mandates, but it is intended to reflect the seriousness of the obligation to ensure due process in connection with relief requested from the Court. For this reason, we strongly recommend that practitioners regularly review the rules and relevant case law and diligently update addresses to ensure compliance with the notice and service requirements.

¹See, e.g., *In re Wilkinson*, 457 B.R. 530, 548-49 (Bankr. W.D. Tex. 2011) (cataloging cases standing for the proposition that service by mail at the address listed on the proof of claim is sufficient for purposes of Bankruptcy Rule 7004(b)(3)).

²See *In re Ochoa*, 399 B.R. 563, 567-68 (Bankr. S.D. Fla. 2009).

Chapter 13 Trustee Updates

Sabrina L. McKinney, Chapter 13 and Chapter 12 Trustee

Happy Fall, y'all!!!! I hope this finds you all well and enjoying this beautiful (NOT 100 DEGREES) day! We have had some changes at the Trustee's office since the last newsletter. Our long-time assistant trustee retired after 40 years of service to the Trustee's office, and we have had some movement in other areas of the office as well. Please welcome our new staff when you "meet" them on the phone, in court or online.

We hope you will take a moment to check out our new website at www.ch13mdal.com. We have a new staff member in our IT department, and he has done a complete overhaul of our website. It has a new fresh look and is also full of new content so please check it out! It still has all the forms and other information it has always had, so do not be alarmed when you see the new look.

In addition to the new website, we have also revamped and streamlined some of the forms we keep on the website. One form is the cash collateral motion template. So, while you are cruising our new website, please be sure to check out the forms tab and other tabs for potential updates on resources.

Speaking of resources, we wanted to remind those of you new to the Middle District bankruptcy practice that the Trustee's office offers what we call "Bankruptcy 101." If you are interested in spending some time at the Trustee's office to talk about our local rules and practices, please feel free to reach out to me via phone or email and we can set up a time to meet. Also keep in mind that this is not just limited to new practitioners. If you are an experienced practitioner and just want to talk shop, theory, or tactics, our "Bankruptcy 101" can be revamped to "Bankruptcy 401." Again, feel free to reach out if you are interested in participating.

With the implementation of our new local rules coming soon and the new plan form that is coming with them, things are changing in the Middle District. It is our plan to try to schedule some short CLEs to talk about the new rules and plan when they are all approved by the 11th Circuit. Just know that the Trustee's office is here for you and, as always, I am available to you at any time if you have questions or would like to talk.

Enjoy the season, take care, and we'll see you soon at the forums in November!

Eleventh Circuit Holding

On September 13, 2023, the Eleventh Circuit issued an opinion in *City of Jacksonville v. Jacksonville Hospitality Holdings, L.P., et al*, analyzing the stipulated dismissal procedure in Federal Rule of Civil Procedure 41(a)(1)(A)(ii). In its opinion, the Court ruled that the term “all parties” means all parties to the current action who have appeared at some point in the litigation, past or present.

If your case has multiple defendants and you are looking to dismiss a party based on Federal Rule of Bankruptcy Procedure 7041 which incorporates FRCP 41(a)(1)(A)(ii), please ensure you have the agreement of all parties who have appeared, even those that have been dismissed prior to the pending joint stipulation.

Helpful Tips from the Clerk’s Office

From the Courtroom Deputies

- ◆ When preparing for a trial or an evidentiary hearing in which exhibits will be introduced, please contact the courtroom deputy prior to the hearing date with any questions regarding the technology found in the courtroom. The courtroom deputy can schedule a time to meet with any interested party in the courtroom to help them familiarize themselves with the available equipment.
- ◆ When preparing a proposed order, the order title needs to be specific. The title should include whether a motion is granted or denied and a reference to the motion (ex: Order Granting Motion to Incur Debt).

From the Case Administrators

- ◆ Do not forget to pay the filing fee when amending Schedules D or E/F.
- ◆ When filing a Notice of Appearance and Request for Notice, please include a Certificate of Service with the notice. A submission error will enter if it is not included.
- ◆ If you receive a submission error, remember that the pleading you file to correct the submission error is now Amended and should be filed as such.
- ◆ Applications to Employ must be filed by the person being employed, not just a member of the firm.
- ◆ When amending schedules D and E/F, please remember to type in the names of the creditors being added to the case.
- ◆ When you file a motion, be sure to include a signature block on the motion and the certificate of service.
- ◆ Rule 5005-1 requires attorneys to file all filings electronically using their login. Paper filings are not accepted and will be returned.
- ◆ The certificate of credit counseling must be submitted within 14 days of filing the petition. If the credit counseling is not filed with the case, you will receive a notice of deficiency giving a 14-day deadline to have the credit counseling filed. If the credit counseling is not submitted by the due date, a Clerk’s Order of Dismissal, not a Clerk’s Notice of Dismissal, will enter dismissing the case.
- ◆ Please remember questions 2 and 12 on the Voluntary Petition for Individuals (official form 101) instruct you NOT to include the name of any separate legal entity such as a corporation, partnership, or LLC that is not filing this petition.

Helpful Tips from the Clerk's Office Continued

From the IT Department

- ◆ Phone Decorum - Please remember to mute your phone when you dial in for telephone hearings, and instruct your client to mute their phone if they are dialing into the hearing. Only unmute your phone when your cases are called. You can use the mute feature on your phone or you can mute and unmute by dialing *6. As a reminder, please do not put your phone on hold as music might play – if that happens, you will be disconnected from the call. The IT staff monitors the calls and will mute you or disconnect you if a line is causing a disruption in court.
- ◆ PACER and ECF Logins - As a reminder, everyone who files in ECF must have their own PACER account linked to ECF. Your account is your signature, and the email address associated with your account is where any notices will go through the system. If you need to modify or add secondary email addresses, you may modify your own account in ECF by going to Utilities > Maintain Our ECF Account > Email Information. Make sure you go back to the main menu and click Submit for the changes to take place.
- ◆ Also, do not share your PACER and ECF login with third parties. By giving them access to your account, notices, case access, and access to potentially sealed information will be transferred to unauthorized representatives.
- ◆ ECF Filing Agent Accounts - Filing Agent accounts are only for those individuals working for attorneys or trustees and will be filing on behalf of the attorney. Creditors and individual attorneys must use individual filing accounts linked to a name. For more information on the types of ECF accounts and how to register, please see our website at <https://www.almb.uscourts.gov/ecf-registration>.

2023 Bankruptcy Rule Changes

- ◆ Rule 3011 adds a requirement that the clerk's office website maintain a link to search unclaimed funds. We have had that link on our website for a couple of years now in anticipation of this change. The link is under Filing Information: <https://www.almb.uscourts.gov/unclaimed-funds>.
- ◆ Rule 8003 modifies section (a)(3)(B) stating that any appeal must include the judgment or any appealable order from which the appeal is taken. Official Form 417 is updated to match the new rule.
- ◆ Rule 9006(a)(6)(A) adds Juneteenth as a legal holiday.
- ◆ Rule 9038 is new. It authorizes the Judicial Conference to declare a "Bankruptcy Rules emergency if it determines that extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a bankruptcy court, substantially impairs the court's ability to perform its functions in compliance with these rules."
- ◆ Official Form 410A is modified to provide lines for both principle and interest instead of a combined field.
- ◆ In December of 2024, we will see the updated Federal Rules of Bankruptcy Procedure. The updates cover readability of the rules and break out rules and paragraphs into more subparts to make them easier to read. The numbers won't change nor will the meaning. The framers have specifically kept terms of art such as "meeting of creditors" in the rules to avoid any confusion. The clerk's office will publish the updated rules on its website as soon as they are available. You should review the 2024 rules carefully as your existing templates and references might be changing.

Personnel Changes in the Clerk's Office and Chambers

Shellie Reardon is the clerk's office newest case administrator. She was born at the United States Air Force Academy in Colorado, and her family moved to Alabama shortly thereafter. She worked in bankruptcy for Richard Shinbaum from 2009 to 2012 and was most recently the executive administrative assistant to the Chief of Police at Tallassee Police Department for six years. While at the department, she was a member of the command staff and an agency administrator for state and federal agencies. Shellie enjoys spending time with her four kids and two grandchildren and watching her son play football and baseball at Ezekiel Academy.



Rebekah Mabe is Judge Hawkins' new term law clerk. She was born in Abington, Virginia, and raised in Johnson City, Tennessee. She completed her undergraduate degree at the University of Georgia with a Political Science degree and earned her JD from Mercer University School of Law in 2023. When she is not working, Rebekah spends her time hanging out with friends and family and going to UGA football games. Her hobbies include reading, cooking, and traveling with friends and family.

BA Office Welcomes New Staff Attorney

Hayden Sneed joined the Bankruptcy Administrator's office as a bankruptcy attorney in September. Before joining the BA's office, he served as a term law clerk for both Judge Sawyer and Judge Hawkins in the United States Bankruptcy Court for the Middle District of Alabama. Prior to his clerkships, he practiced as a consumer debtor's lawyer for three years. Mr. Sneed is excited to join the team at the BA's office and approaching the practice of bankruptcy law from a new perspective. Mr. Sneed earned a B.S. from the University of Texas at Arlington; a J.D., *cum laude*, from Faulkner University, Thomas Goode Jones School of Law; and an LL.M. in alternative dispute resolution from Jones School of Law. He is currently pursuing an LL.M. in agricultural and food law from the University of Arkansas School of Law. He enjoys competing in trivia competitions, learning new and challenging skills, and is an avid fan of the Arkansas Razorbacks.





Save the Date!

ALMB will host its 2023 attorney forums as listed below. Please save the date so you and members of your staff can attend one of these meetings. One hour of CLE will be awarded when the Bar's new CLE portal is operational.

Wednesday, November 1, immediately following court - Dothan, in the bankruptcy hearing room

Thursday, November 2, at 10:00 - Montgomery, in courtroom 4C

Wednesday, November 8, immediately following court - Opelika, in the bankruptcy courtroom