

Service of Motions

The Bankruptcy Rules create a complicated system of service requirements for the various procedural actions permitted under the Bankruptcy Code. There are five different categories of requests for relief from court, and each has different service requirements:

1. Adversary proceedings specified by Rule 7001, which are served with a summons as prescribed in Bankruptcy Rule 7004.
2. Contested matters, which is a catchall category (Bankruptcy Rule 9013), and which are brought by motion. Bankruptcy Rule 9014(a). Motions are required to be served in the same manner as a summons and complaint under Bankruptcy Rule 7004.
3. Papers served after appearances in adversary proceedings, which are served on the attorneys in accordance with Bankruptcy Rule 7005.
4. Applications,¹ which are served in accordance with Bankruptcy Rule 2002.
5. Subpoenas, which are served in accordance with Bankruptcy Rule 9016.

Most of the service problems the Court has observed arise from the failure to serve motions in accordance with Bankruptcy Rule 7004. Many parties are aware that service of a lien strip motion brought under Bankruptcy Rule 3012 must comply with Bankruptcy Rule 7004, but compliance with Bankruptcy Rule 7004 is necessary for all motions brought before the Court. Since proper service is necessary for the Court to have jurisdiction over the responding party, (*See Mason v. Genisco Tech. Corp.*, 960 F.2d 849, 851 (9th Cir. 1992)),

¹ There are at least ten categories of applications, which are to be served in accordance with Bankruptcy Rule 2002.

- (a) Application for permission to pay filing fee in installments (Rule 1006(b)(1));
- (b) Applications to sell or use property of the estate (Rule 6004);
- (c) Application for appointment of creditors' committee organized before order for relief (Rule 2007(a));
- (d) Application for employment of professional persons (Rule 2014(a));
- (e) Application for entry of final decree on consummation of a Chapter 11 plan (Rule 2015(a)(6));
- (f) Application for compensation for services rendered and reimbursement of expenses (Rule 2016(a));
- (g) Applications for approval of compromises (Rule 2002(a)(3));
- (h) Application by U.S. attorney or attorney appointed by the court for notice as to criminal contempt (Rule 9020(a)(2));
- (i) Application for removal (Rule 9027(a)); and
- (j) Application to shorten period of notice (Rule 9006(d)).

failure to serve a motion properly can result in a future challenge to the order granting the relief requested.

Electronic service by CM/ECF on a party that has appeared in the bankruptcy case may suffice in lieu of service by personal service or by first-class mail. However, CM/ECF service is not an effective substitute for the service of process of a summons and complaint in an adversary proceeding or the service of a subpoena. It would also not be effective where certified mail service is required, as in the case of service on FDIC insured institutions under Bankruptcy Rule 7004(h). Finally, before relying upon service by CM/ECF even where authorized, parties must be careful that the client has clearly authorized counsel to accept service on their behalf. *See Rubin v. Pringle (In re Focus Media Inc.)*, 387 F.3d 1077, 1081, 1083 (9th Cir. 2004) (the critical inquiry in determining whether an attorney is authorized to accept service of process is whether the client acted in a manner that expressly or impliedly indicated the grant of such authority). Many Requests for Special Notice are vague, or even expressly limit the matters in which the appearing attorney is authorized to accept service of process. Requests for Special Notice must be carefully reviewed to ensure that service will be effective if the attorney received notice by CM/ECF.

Each time a motion is to be served, the attorney must carefully review the applicable service requirements imposed by the Bankruptcy Code, Bankruptcy Rules and Local Rules of this Court to ensure service fully complies with the jurisdictional mandates.