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# 2021 Consumer Practice Extravaganza

## **Make Sure You Get Noticed! Rule 7004 and Ensuring Due Process**

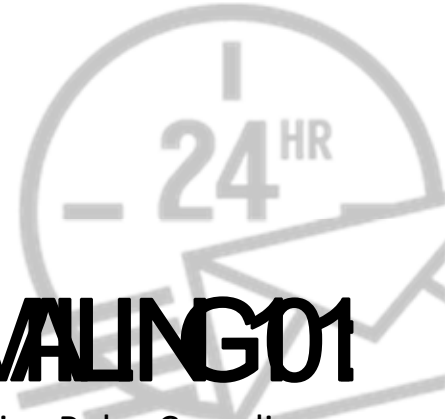
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# BANKRUPTCY MAILING 01

## A Guide to Bankruptcy Noticing Rules Compliance

- Jay S. Jump, Esq.  
CEO, BK Attorney Services, LLC

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## ABOUT THE AUTHOR:

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Jay S. Jump has been a bankruptcy attorney since 1998 practicing in the Eastern and Western Districts of Washington. He has represented thousands of debtors, creditors, and other parties in the bankruptcy Court over the last fifteen years. A member of NACBA since 2004, Mr. Jump has been a leader in the bankruptcy world fighting for the rights of debtors and forging the application of consumer protection laws into the bankruptcy realm. In 2005, Mr. Jump co-founded a new company named Certificateofservice.com, a mailing service for debtor attorneys who were dealing with shrinking budgets and fewer clients due to the changes in the bankruptcy laws.

Outsourcing this simple task proved to be a big time saver for lawyers across the country and it wasn't long before panel trustees and Chapter 13 Trustee's took notice as well. Shrinking Court budgets forced some trustees to handle their own noticing requirements. Adapting to the changing market needs, [www.certificateofservice.com](http://www.certificateofservice.com) grew to accommodate the different needs of the various entities in the legal market. CertificateofService.com now handles the mailing for over 4200 law firms across the country. Our clients include Chapter 13 trustees, Panel Trustees, thousands of debtor and creditor attorneys as well as the United States Trustee.

Mr. Jump continues to lecture and teach other lawyers best bankruptcy practices in a changing economy and legal climate. Leveraging technology has been a central tenet of Mr. Jump's philosophy and this cornerstone has been critical to building a successful business that thousands of people rely on every day to make sure due process is observed and notice provided to all those who are required to have it.

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## INTRODUCTION:

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The Objective of this guide is to educate the reader and provide them with a tool to run through a simple checklist to determine when something needs to be served. While the tool is helpful, the background must be given so that the attorney knows WHY they are serving something on the entire MML or something less than the MML.



**GENERAL OPERATING PRINCIPLE:** *If you are affecting a party adversely, then you no doubt have to serve them with the pleading that is going to affect them adversely! If you are not sure, then the better practice is to assume that you should notice them. It is not worth trying to scrimp on cutting down the address list to save a penny when you are jeopardizing the entire case and potentially, a malpractice claim.*



**DISCLAIMER:** *This discussion pertains to the Federal Rules of Bankruptcy Procedure, not your own local rules. Local rules can differ from jurisdiction to jurisdiction and even between Courts in the same jurisdiction. Always check your local rules to see if there is any additional requirement necessary to meet the service rules.*

## 2021 CONSUMER PRACTICE EXTRAVAGANZA

The common idea of service outside of the bankruptcy court normally involves visions of state licensed process servers appearing on defendants doorsteps to hand over an official summons and complaint letting the defendant know, personally, that a legal proceeding has been commenced against them.

However, in Bankruptcy Court, the idea of service is accomplished largely by first class mail through the USPS where the burden is simply to show that the document has been mailed to the intended recipient. There is quality reasoning for this in that many times, there will be dozens, if not hundreds of entities, individuals, and attorneys who need to be kept informed of the proceedings in Bankruptcy Court. For efficiency purposes, notice is typically allowed to be made via the USPS, utilizing First Class Mail.

First Class Mail is required to be delivered within three days of being dropped into the USPS Mail Stream. This is why most motions include the time limits of 'X days plus three days for mailing.' Under current USPS standards, it is expected that a piece of mail dropped into the USPS Mail Stream from Seattle, WA will reach its intended destination in Key West, FL within a three day period. (Recent budget cuts at the post office will probably now result in a four day mail period.)

Bankruptcy Rules draw a distinction between service and notice. It is frequently lost in our daily practice, but the difference is important.

Notice in bankruptcy cases is different from service of process. Many actions may occur in a bankruptcy case that may affect all creditors generally, but none specifically. Notice

requirements of bankruptcy are designed to satisfy the due process requirements of adequate notice to parties whose interests may be affected in such proceedings. In contrast, when a bankruptcy proceeding, such as an objection to claim or the sale of property free and clear of liens, directing affects the rights of a specific party, the initiating motion or objection must be served on the affected party in the same manner as a summons and complaint served pursuant to Rule 7004.

- *In Re Association of Volleyball Professionals*, 256 B.R. 313, 319-20 (Bankr. C.D. Cal. 2000) (citations omitted)

In Bankruptcy, the word serve has three different meanings:

- (1) To serve, as required by Rule 7004, a document in an adversary proceeding that must be served with a summons, or a motion or application initiating a contested matter on the parties against whom relief is requested or who are otherwise entitled to receive the document;
- (2) To serve, as required by F.R.Civil.Proc. 5 (F.R.Bankr.Proc. 7005) or 5(b) (9014(b)) a document in an adversary proceeding or contested matter after the adversary proceeding or contested matter has begun; and
- (3) To transmit or 'notice', but not serve under Rule 7004, a document that neither initiates nor is filed in an adversary proceeding or contested matter, including by mailing a notice governed by Rule 2002.

In short, counsel has to determine first whether the pleading creates a contested matter or is merely a

notice. Once that determination is made, counsel must then determine whether the pleading constitutes the initiation of a contested matter or the furtherance of a contested matter.

Without proper service, the Court cannot obtain jurisdiction over the parties. Since the Bankruptcy Courts have the power of 'long arm' jurisdiction, ***service is an absolute necessity as a person is not bound by a judgment in a litigation to which he or she has not been made a party by service of process.*** *Mason v. Genisco Tech. Corp*, 960 F.2d 849, 851 (9<sup>th</sup> Cir. 1992) quoting *Hansberry v. Lee*, 311 U.S. 32, 40, 61 S.Ct. 115, 117, 85 L.Ed. 22 (1940).

The above is the precise reason why practitioners in the bankruptcy court must pay attention to the service rules requirements. Without jurisdiction, the creditor/debtor/third-party defendant, etc., is not bound by the Order or Judgment of the Court. For debtors counsel, this can have profound consequences on their clients. If the purpose of the bankruptcy court is to provide an efficient and convenient forum for considering all controversies and matters surrounding the debtors' bankruptcy proceeding, then it is not unreasonable for affected parties, or the Courts, to demand that they be served in the proper method.

## WHO HAS THE DUTY TO SERVE?

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Any party who is choosing to initiate a bankruptcy proceeding, adversary proceeding, or contested matter has the duty to serve the documents. The Bankruptcy Court provides Notice of the bankruptcy proceeding and Notice of the discharge, (in some Courts, they will also serve the initial Chapter 13 plan), but it is the duty of counsel to serve all other matters which initiate a contested matter/proceeding. This duty extends to both debtor, trustee and creditor counsel. It doesn't matter which side of the aisle you are on, just whether or not you are initiating the process.

Note that the bankruptcy rules being the bankruptcy rules, sometimes a contested matter can be initiated in a *responsive* pleading. For example, an objection to claim or objection to Chapter 13 plan.



## ELECTRONIC SERVICE – RULE 9036

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With few exceptions, all practitioners in the bankruptcy court are required to use CM/ECF. As you have no doubt noted, after filing a document on ECF there is a final screen that lets you know who was served electronically and who was not served electronically. This seems clear enough, however, for the purposes of SERVICE as discussed above, it does not constitute actual ‘service’ unless the receiving party has agreed that it does constitute service.

In Re Menden, 07-33707, N.D. Ohio, Western Division, held that being a registered user of ECF constituted proper service. As an Electronic Case Filing system registered user, National Auto's attorney consented to receiving electronic service of papers in lieu of mail service. See United States Bankruptcy Court for the Northern District of Ohio Electronic Case Filing Administrative Procedures Manual, Part II, ¶ D(1); Fed. R. Bankr. P. 9036. Thus, under Rule 2002(g)(1), notice of the proposed Amended Plan was properly sent as directed by an authorized agent of National Auto. As a registered user of ECF, it is important to look at the agreement you signed with your local ECF Case Management system, to ensure that there is consent to electronic service. If it is not present, the documents you are serving electronically and being received by opposing counsel, or creditors, may not constitute actual service.

Before relying on service by CM/ECF even where authorized, parties must be careful that their client has clearly authorized counsel to accept service on their behalf. *Rubin v. Pringle (In Re Focus Media, Inc.)*, 387 F.3d 1077, 1081, 1083 (9<sup>th</sup> 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 an authority. That is a rather vague concept and if it is not clear from the notice of appearance or request for special notice, you can be sure that an objection or motion to set aside an order will be filed raising this as a defense.

## MASTER MAILING LIST (“MML”)

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The master mailing list is a compilation of addresses created when the original bankruptcy petition was uploaded to CM/ECF. The list of creditors that appears at the end of the petition schedules is the beginning of building the appropriate address list.

With modern software programs and the imposition of ECF, the creditors list has become entirely automated. As the debtor inputs their creditors into the petition prep software, a file is being created. The name of that file is ‘creditor.txt’. This file contains a one column list of all the creditors you have listed in the petition. It doesn’t matter if they are secured, unsecured, a lessor, credit bureau or priority creditor. They are all placed in this list.

As petition is electronically uploaded into ECF, the ‘creditor.txt’ file is uploaded as a separate component and the ECF database incorporates those addresses into what will become the Master Mailing Matrix.

Because it is the debtor or debtor counsel who prepares the list, this is the time for good practitioners to build in certain addresses. For example, some debtors counsel like to include the addresses for Equifax, Transunion, and Experian in their petitions. This ensures that notice reaches the credit bureaus when the Court sends out the notice of discharge, a critical element in post discharge litigation. If you know that you will be initiating some adversary litigation as part of the bankruptcy strategy, you might want to include addresses such as the civil process clerk, the United States Attorney, or the IRS Special Procedures unit. In other words, it pays to plan ahead.

## ACCESSING THE MML

To access the master mailing list, simply do the following:

- (1) Log into your CM/ECF/PACER account.
- (2) Click on Utilities.
- (3) Under the Miscellaneous Section, click on 'Mailings'.
- (4) Select 'Mailing Matrix by Case.'
- (5) Enter the Case Number. (Ex. 14-12345)
- (6) Make sure that the checkbox 'All' has been selected.
- (7) Make sure that the print format is three columns.
- (8) Click 'Next'.
- (9) A three column pdf document should appear with all of the names of the parties listed in the creditor.txt file as well as the preferred addresses.

You can also simply book mark the appropriate page for your court. The following link will take you directly to the Western District of Washington Mailing Page.

<https://ecf.wawb.uscourts.gov/cgi-bin/MailLabelsCase.pl>

Simply substitute your court and district for 'wawb' and this should take you to the page you need to access to get to the Master Mailing Matrix. The majority of courts use the same ECF software.

## DECONSTRUCTION OF THE MML

The .pdf master mailing matrix provides a plethora of information about the case as well as the creditors listed. There is a way to access an electronic list that you can cut and paste into an excel spreadsheet, but that method doesn't pass the address list through the BNC preferred address system, nor does it pass the address through the USPS CASS system.

**Preferred Addressing** – The bankruptcy court has thoughtfully provided creditors with a means to centralize their bankruptcy noticing. This is good news for debtor attorneys as creditors who have a preferred address have a far less credible argument for lack of service over a creditor who has not provided a preferred address. You can learn more about the preferred address system by going to the National Creditor Registration Service <https://ncrs.uscourts.gov/index.adp>.

Preferred addresses will be preceded by a (p) in the address line. For example, in the sample matrix located *supra*, the debtor counsel listed Capital One as a creditor. Capital One has provided a preferred address through the NCRS system.

<b>Address Provided by Debtor  </b>	<b>Preferred Address from NCRS</b>
Cap One Bk	CAPITAL ONE
PO Box 85520	PO BOX 30285
Richmond, VA 23295	SALT LAKE CITY, UT 84130



**PRACTICE TIP:** Use all CAPS for your address entry. Remember that the USPS Mailstream is almost entirely automated. Envelopes are scanned using high speed imaging equipment. Envelopes that are not properly addressed or poorly addressed will be rejected, thus slowing delivery time. You can ensure prompt and speedy delivery by using all caps in at least a 10 point font. The high speed scanners at the USPS will have an easier time reading the address on the envelope.

**USPS CASS** – The USPS provides a database of every address in the United States and a means to certify the deliverability of the listed address. As the three column .pdf mailing list is generated, the list of addresses is passed through this database and will determine if some of the addresses are undeliverable. For example, often times, debtor counsel will simply put the words of the creditor in their software with no address. Example: Credit Card Services, Wilmington, DE. As this address is passed through the various filters, it will be determined that Credit Card Services in Wilmington is not a valid address and it will be listed as undeliverable. The system will place a (u) in front of the address. See Appendix C.



**PRACTICE TIP:** When creating your address lists, be thorough! Provide the name of the creditor on the first line, the delivery point address on the next lines, and the city, state and zip on the final line. States are properly designated by their two letter identifier! Spelling out the name of the state or using the old three letter identifier system is no

*longer acceptable in our modern era USPS. Phone numbers and account numbers placed after the city, state, and zip lines tend to confuse electronic databases and can result in your mail not being properly delivered or routed. In addition, counsel who place account numbers in the address section can unwittingly expose their clients to identity theft as the account number is printed on the front of the envelope which passes through the entire nation before arriving at the creditors' doorstep!*

**Example of Proper Address:**

UTAH STATE TAX COMMISSION  
ATTN: BANKRUPTCY UNIT  
210 NORTH 1950 WEST  
SALT LAKE CITY, UT 84134-9000

**Example of Improper Address:**

Wells Fargo Home Mortgage  
PO Box 14411  
Des Moines, Iowa 50306  
A/ct: 94-578542  
(475) 322-1234

**Matrix Header** – At the top left corner of the Label Matrix is a six line block of text that depicts the case number, the court district, and court division, as well as the date and time stamp of the creation of the label matrix.

Label Matrix for Local Noticing  
0981-2  
Case 08-10542-TTG  
Western District of Washington  
Seattle  
Fri Jan 30 08:36:51 PST 2015

From this block of information, the Court will be able to know when the list was generated as well as which case it pertains to.



**PRACTICE TIP:** Always make a fresh pull of the Master Mailing Matrix when you need to serve your documents. While it might be tempting to access the list the first time you need it and simply reference the same mailing matrix list for the next five years of your clients Chapter 13 plan, a stale list can also be grounds for an objection to service as addresses may have changed, additional parties might have been added to the list, etc. There are some districts which require you to attach the MML to the certificate to show when the list was pulled.

**Duplicate Addresses** – Often times, debtors will have multiple accounts with one creditor. For example, many debtors have more than one Capital One card. Capital One may be listed multiple times on the Master Mailing Matrix. Depending on how the address is input, the system may treat these as duplicate addresses. Duplicate addresses will have a (d) placed in front of the name and the system may or may not bypass that address. If it does bypass the address, a notice will be provided at the bottom of the master mailing matrix.

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d) Internal Revenue Service  
Centralized Insolvency Operations  
PO Box 7346  
Philadelphia, PA 19101-7346

(d) Utah State Tax Commission  
Attn: Bankruptcy Unit  
210 North 1950 West  
Salt Lake City, UT 84134-9000

(u) Wells Fargo Bank, N.A.

**Matrix Accounting** – The Master Mailing Matrix will also give you an accounting at the end of the matrix to denote how many addresses were listed on the matrix, how many were mailable and how many were bypassed. This is helpful to keep an accurate track of addresses for service. As the preparer of the list and the party who is responsible for notice, it is incumbent upon counsel to make sure that the ‘bypassed recipients’ is a very low number and to ensure that the addresses are deliverable.



**PRACTICE TIP:** *You can copy single addresses from the master mailing matrix by holding down the ‘Alt’ key or ‘Ctrl’ key (depending on your OS) as you drag your mouse across the address highlighting the address. If you don’t click on either of these keys, you will copy the entire line of text across the three columns.*

## THE US POSTAL SERVICE:



Despite what you may or may not think of the current government debacle with regard to the Post Office, the fact of the matter is, even at nearly fifty cents per piece, mail is the most effective, reliable, and inexpensive noticing system available. [www.usps.com](http://www.usps.com). In 2013, the post office handled 158.4 billion piece of mail. They move 40% of the world’s mail volume. There are 211,654 mail delivery vehicles, the largest civilian fleet in the world. Each year, the USPS handles 38.8 million address changes and they add about 750,000 new delivery points each year for a total of 152.9 million delivery points throughout the nation. Annual revenue in 2013 was 67.3 billion, funded entirely by the sale of postage and post office products. The USPS does not receive any tax dollars from the U.S. Government. <http://about.usps.com/who-we-are/postal-facts/size-scope.htm>.

The post office has made a concerted effort to become more efficient and automated. Computers and high speed scanning equipment allow the USPS to achieve the numbers referenced above at an amazing level of efficiency. In addition, the USPS offers verification to mail houses and postal clerks to

ensure that the address on your envelopes are deliverable to the most up to date and recent address for the addressee.

For example, with the *CASS Verification System*, the post office is able to verify that the address you have placed on the envelope is deliverable. With the *Move-Update* verification system, the Post Office can ensure that the mail you drop into the mailstream with the old address can be properly forwarded to the new delivery address when the addressee files a notice of address change. This data is tracked and verified for 18 months after the address change has been entered.

What is even more amazing is that the USPS doesn't make you readdress the envelope if you have placed the incorrect or old address on the actual mailpiece. With the creation of Intelligent Mail Barcoding (IMB), the USPS simply prints a small barcode on the bottom of your envelope. The barcode contains multiple pieces of data in a 65 column format that includes the delivery point origin, the class of mail that is being sent, the destination address, timestamp, routing code, Mailer ID (for professional mailhouses), and sequence number. This means that each piece of mail that is sent has a specific code and can be specifically tracked through the USPS mailstream. By using the IMB system, every piece of mail is trackable from the moment it enters the mailstream, to the moment that it exits the mailstream. This is a significant milestone for the USPS and has a direct impact on counsel as now each mailpiece can technically be tracked to show that the USPS delivered the mailpiece to the destination address, even if that mailpiece is not certified. Remember that certified mail is used to show that the mail was 'received' by the recipient. Regular First Class Mail is used to show that the mailed was 'delivered' to the recipient.

## **MAIL CLASSES –**

There are different classes of mail: First Class, Second Class or standard rate, Book Rate and a few others. For legal purposes, all mail must be delivered first class. Anything less than first class does not ensure delivery within a set number of days. Standard class mail can take up to six weeks to cross the country. The bankruptcy rules require first class mail for service.

## IMPORTANCE OF PROPER SERVICE

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In the introduction section, we discussed that service is necessary to obtain jurisdiction. This is a central tenant of our legal system which we tend to lose sight of as a minor detail, but that is partly because compliance is so easy and simply to ensure that we can properly exercise the jurisdiction of the Court. It doesn't take a lot of effort to ensure that service is effective.

No other court system makes compliance so simple. In most other courts, there is an affirmative duty to show that the documents were 'received and accepted' by the intended recipient. The Bankruptcy Rules allow you to simply demonstrate that they were deposited into the USPS mailstream. No delivery confirmation is required, unless specifically stated in the code or rules!

This shifts the burden to the creditor to show that service was not effected properly, an incredibly difficult burden given the volume of cases and service issues that the Court handles every day. As a practitioner, it is important to ensure that you are properly complying with the rules and serving documents. The failure to do so can result in new rules which increase the cost of service to the debtor and debtors counsel.

When preparing your address lists, it may be tempting to exclude certain parties to save on the expense of mailing and serving, however, this can result in a creditor not being bound by an order of the Court (no jurisdiction) or worse, could result in sanctions against counsel for filing a false declaration for the certificate of service.

In other words, the rules about service are pretty easy for practitioners to adhere to. Proper service allows the Court system to continue to be efficient. If we do not continue to adhere to the rules and effect proper service, the Court will create a system where 'proof of receipt' will become the norm instead of 'proof of mailing'.

## THE CERTIFICATE DOCUMENT

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Now that we have covered the importance of service, how to do it, and where to get the addresses, the certificate has to be created and filed with the Court. In this section, we will break down the certificate of service to show compliance with the Court Rules. A copy of a certificate of service can be found on the next few pages.

The certificate must be titled just like any other pleading. It must have the proper case captioning and follow the same rules as other pleadings entered with the Court. Below the case number, the proper titling of the document will be either: (1) Declaration of Mailing, (2) Proof of Service, or (3) Certificate of Service. In this instance, while notice and service are two different things, the titling of the document does not need to separately identify that which is being served or noticed.

Depending on your local rules, certain information must be presented in the heading and caption section. This can include the Chapter of the bankruptcy, the Judge, the hearing location, hearing date, time, and response date, if there is one, as well as the ECF docket reference number.

As cases become increasingly complex and electronically stored, the need to reference the document to the proper docket entry is becoming ever more important. You already typically have to link your certificate filing to the motion that it relates to. This is simply a function of our electronic age vs. when we used to keep all the documents in the case file.

As the usage of the PACER database becomes more and more common, the necessity of properly indicating which ECF Docket is being referenced has become more important. It is good practice, and

required in some districts that you properly denote the ECF Docket Reference Number for the pleading to which your certificate of service relates.



**PRACTICE TIP:** *It is good practice to start now as I suspect it will become mandatory in all districts sooner rather than later to make reference to the ECF Docket Reference Number anytime you reference another Order, Motion, or other pleading in your filing document.*

### MAKING THE DECLARATION -

The critical language necessary to a certificate of service is that:

On, a date certain, your declarant, did cause a copy of the following documents, described below.

You can include the proper language to set up a declaration and there would be nothing incorrect in doing so, however, the concern can be that you become a witness to a proceeding if the issue of service ever arises. Certificates of Service fall somewhere between a mere 'Notice' and a 'Declaration' pleading. The language above simply sets forth that the signor to the document is the one that caused the documents to be dropped into the USPS mailstream.

### DESCRIBING THE DOCUMENTS TO BE MAILED

It is tempting to be efficient and simply describe the Amended Chapter 13 plan you are serving as 'Plan', however, that really won't be sufficient for the people who will look at the certificate years later and decide that the word 'Plan' is lacking enough description. While you may be able to know what 'Plan' means, the fact of the matter is, that you are writing this certificate so that the people who have to verify and review it will know exactly *what* documents were served and on *whom*.

A full description will ensure that the documents are properly linked and referenced. To this end, the more appropriate description would be "Third Amended Chapter 13 Plan dated January 12, 2014 with Notice of Hearing for February 10, 2014, Motion to Approve Third Amended Chapter 13 Plan dated January 12, 2014, and proposed order." There isn't much guess work involved in that description.

If you are serving multiple documents you can also break them out into separate lines.

Third Amended Chapter 13 Plan dated January 12, 2014  
Notice of Hearing to Approve Third Amended Plan  
Motion to Approve Third Amended Plan  
Proposed Order on 3rd amended plan dated Jan 12, 2014

The importance of being thorough and descriptive will pay off with great dividends when you are looking at the certificate years later trying to figure out what you did.

### DECLARING THAT THE DOCUMENTS WERE MAILED

Were deposited for delivery by the United States Postal Service, via First Class United States Mail, postage prepaid, with sufficient postage thereon to the parties listed below **or** on the attached mailing matrix exhibit, a copy of which is attached hereto and incorporated as if fully set forth herein.

The use of the specific language above allows the declarant to say that the pleadings, which have been fully described, were dropped into the USPS mailstream. It doesn't say they were received, it doesn't say that the addressees have acknowledged receipt; it simply says that you did what was required of the rules. You dropped them into a mailbox with the appropriate amount of postage to ensure that the mailpiece will make it all the way to the destination; you bought the stamp that went on the envelope, and that you ensured that it was mailed first class.

The statement also makes reference to the addresses. For most mailings in other cases, a notice of mailing might only contain one or two addresses. In that case, it is easier to type out. In bankruptcy court, there can be hundreds, if not thousands of addresses that need to be listed. In this case, it is

easiest to attach the master mailing matrix and simply reference it as an exhibit.

Because the matrix contains the lines contained in the first data block located at the top of the left hand column that include the description of the case as well as a date and time stamp, you have a built in verification feature to show that you pulled the matrix from ECF at the same time/day as the mailing. Some courts now have local rules that state the pull of the ECF Matrix must be the same date as the day of mailing. This data block, provided by the Court, can be a supporting argument to show that you actually did mail the documents to the parties, as they were listed on the MML at that date and time.

In short, it is almost always a better idea to simply attach the MML to your certificate than write or type out the addresses in your document.

### CLOSING THE DECLARATION/NOTICE –

The undersigned does hereby declare under penalty of perjury of the laws of the United States that I have served the above referenced document(s) on the mailing list attached hereto in the manner shown and prepared the Declaration and Certificate of Service and that it is true and correct to the best of my knowledge, information, and belief.

DATED: January 15, 2015

This particular language sets forth the declaration that the facts are true as of the date indicated and you are letting the Court and every creditor/party on the MML know that the envelopes with the proper documents were dropped into the mailstream with sufficient postage thereon.

Of course, you will also need a signature block section with your /s/ or actual signature depending on how you file your documents, as well as the address and bar number information.

All of this may seem particularly remedial and obvious, but the failure to include all of these critical features can effectively invalidate your certificate of service casting doubt as to whether the documents were properly served at all.

**The filing of the certificate creates a rebuttable presumption that the documents were mailed and received. *In re Bucknum*, 951 F.2d at 206-207; *In re De la Cruz*, 176 Bankr. at 22; *In re Ricketts*, 80 Bankr. 495, 497 (9th Cir. BAP 1987).** This rule is a key support of the bankruptcy system's notice by mail. "If a party were permitted to defeat the presumption of receipt of notice resulting from the certificate of mailing by a simple affidavit to the contrary, the scheme of deadlines and bar dates under the Bankruptcy Code would come unraveled." *Ricketts* at 497.

CertificateofService.com goes above and beyond this requirement by placing a unique tracking number on each and every mailpiece that goes through our facility. This means we can not only identify the exact moment the envelope hit the mailstream, but we can also continue to track it, if necessary to its ultimate USPS destination delivery facility.

## DECONSTRUCTION OF THE RULES

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**DISCLAIMER** – Each district is different throughout the United States. Service rules can change from district to district and even court to court. One Judge might like to know who was served electronically and who was served by mail, the Judge in the next room might not care. On top of the Judges positions, Court Clerks can take their own unique interpretations of the service rules. It is not imprudent to review your local rules and speak with your Court Clerk when preparing your certificate of service for filing to find out the proper format necessary.



**PRACTICE TIP:** *Always keep your bankruptcy Court Clerks happy. If the Judge has questions about your service, you can fall back on the law and argue, the Court expects this and it is the way we operate in the Courtroom. You might win, you might lose, but the argument process and procedure is the way we are accustomed to doing business. Court Clerks are typically not attorneys, but administrators. Thus, when a Court Clerk contacts you, the better rule is not to argue, but to bend and adapt. A happy court clerk is a friendly court clerk.*

### THE FIVE CATEGORIES OF SERVICE

Service and notice is required anytime you are requesting relief from the Court. One Learned Judge has published a list of five categories of Requests for Relief from the Court.

*Adversary Proceedings*

*Contested Matters*

*Post Initiation of Adversary Proceeding Pleadings*

*Applicants*

*Subpoenas*

Adversary Proceedings, specified by Rule 7001, are served with a summons and complaint as prescribed in Bankruptcy Rule 7004.

Pleadings served AFTER appearances in adversary proceedings are served on the attorneys in accordance with Rule 7005.

Contested Matters which is a catchall category (See Rule 9013) when brought by motion (See Rule 9014). When there is a contested matter, the motion requesting the relief is required to be served in the same manner as a summons and complaint under Bankruptcy Rule 7004.

Subpoenas are served in accordance with Bankruptcy Rule 9016.

Applications, of which there are many, are served in accordance with Rule 2002. Some examples of applications served in accordance with Rule 2002 include, but are not limited to:

- (1) Application to pay filing fee in installments (Rule 1006(b)(1)).
- (2) Application to see or use property of the estate. (Rule 6004).
- (3) Application for appointment of a creditors committee organized before the Order for Relief (Rule 2007(a)).
- (4) Application for employment of professional purposes (Rule 2014(a)).
- (5) Application for entry of a final decree on consummation of a Chapter 11 Plan (Rule 2015(a)(6)).
- (6) Application for compensation for service rendered and reimbursement of expenses (Rule 2016(a)).
- (7) Application for approval of compromises (Rule 2002(a)(3)).
- (8) Application by US Attorney or attorney appointed by the Court for notice as to criminal contempt (Rule 9020(a)(2)).
- (9) Application for Removal (Rule 9027(a)).
- (10) Application to shorten period of notice (Rule 9006(d)).

As you can see from this partial list, there are many applications which debtors counsel may never use, but there are a few, such as fee applications, that must be served in accordance with a specific rule. Looking at Rule 2016(a) for fee applications, the rules appears to only require that the document be transmitted (*note the use of the language stating transmitted, not served*) on the United States

Trustee. However, it is important to note that because we file a *motion* to approve the application for compensation, we are actually setting up a potential contested matter, and therefore, must now *serve* the motion in accordance with Rule 9014, thus invoking Rule 7004.

For situations where an application must be served or a notice must be served, the common practice is to do exactly as you do in every other type of pleading. Access the MML on PACER and use that as your mailing list paying particular attention to Rule 7004.

#### **DECONSTRUCTING RULE 7004(b)**

Because this is a paper about mail service and noticing, Rule 7004 is the go to rule to determine who gets to serve and who gets to receive the documents being mailed. Rule 7004 is based upon F.R.C.P 4.

#### **WHO GETS TO SERVE DOCUMENTS?**

Anyone may serve documents by mail so long as they are competent, over the age of 18, and NOT a party to the proceeding. This includes you, your office staff, or a third party service. It does not include the debtor, although pro se debtors serve their own documents all the time in cases.



**PRACTICE TIP:** *Although rare, it is possible to be called as a witness in the case if you are the attorney making the declaration that you, yourself, made the service. Thus, it is always best practice to use someone in your office, for example, a legal secretary or receptionist, or a third party notice provider as authorized by the United States Courts.*

*CertificateofService.com is the premiere bankruptcy noticing service to use. It is best not to be called as a witness in a case where you are the attorney of record.*

Rule 7004(b) sets out the same information as is declared in your certificate. Service is made by United States First Class Mail, postage prepaid. The subsections of Rule 7004(b) determine who is to receive the service.

#### **SERVING AN INDIVIDUAL**

If you are serving Joe Smith, a person who is defined as an individual and not in any of the other categories defined in Rule 7004(b), you may serve that person by mailing a copy of the documents to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.

With one caveat, that individual cannot be an infant or an incompetent person.

#### **SERVING AN INDIVIDUAL WHO IS AN INFANT OR INCOMPETENT**

Most often, as practitioners, we see the incompetence issue in some of our older clients who might be suffering from dementia or other ailment affecting their ability to understand the proceedings they are going through. If you have knowledge that the person is incompetent, then service upon that person should be effected by mailing a copy of the documents to the person upon whom process is prescribed to be served by the *law of the state in which service is made when an action is brought*

*against such a defendant in the courts of general jurisdiction of that state.* The documents in that case shall be addressed to the person required to be served at that person's dwelling house or usual place of abode or at the place where the person regularly conducts a business or profession.

This requires you to be a bit of a savant about service rules in all fifty states, but for the most part, State Court Rules parallel the Federal Court Rules and you will usually find the proper procedure by doing a Google search for WA State Court Rule for Service on Incompetents, if you are trying to serve an incompetent in WA State.

### **SERVING A BUSINESS**

Rule 7004(b)(3) references serving documents on a domestic or foreign corporation or upon a partnership or other unincorporated association. That means, a business such as a sole proprietorship, LLC, General Partnership, Limited Partnership, Corporation, etc. It also refers to homeowners associations and other non-profit operations.

To properly serve a business, the documents to be served must be delivered to the attention of an officer, managing or general agent, or to any other agent authorized by appointment to receive service of process.

The classic example of this is service upon a business. To send notice to a business, the business address will be sufficient. But, since Rule 7004 deals with service upon a business and not merely notice, more is required than just the address of XYZ Corp at 123 Main Street in Seattle, WA.

When serving a business, the quickest method is to go to the secretary of state's website for the state where the business is registered. In Washington, this is located at <https://www.sos.wa.gov/corps/>. A quick Google search with the parameters of 'your state secretary of state corporations search' will usually get you pretty close to where you need to be.

Using the secretary of state website can also show whether the corporation or business is currently licensed and registered in the state. Often, this can be helpful in determining whether the corporate veil needs to be pierced or to determine if there is even a corporate shield in the first place.

Your state will most likely not be the same as Washington State, however, the resulting information should present you with the Tax ID number of the company, what kind of company it is (LLC, Corp, etc.), the filing date of the corporation, active/inactive status, as well as the Registered Agent Information for the company. You may find both the physical location address as well as the mailing address. Finally, the officers or governing persons of the business will usually be listed along with their respective address.

Many times after doing a corporations search, you will come across the registered agent as being a company who agrees to be the registered agent contractually for a fee. In WA State this is usually Corporation Service Company, 300 Deschutes Way SW, Suite 304, Tumwater, WA 98501.

Service can become tricky when you are serving through a contractual registered agent. They are the registered agent for many companies, some of which may have similar sounding names. Moreover,

your address and naming of the company that the registered agent contracts with must be exact.

A search of Capital One Corp in Washington State turns up a lot of possibilities. You must choose the exact match with the company you are trying to serve. If you do not exactly match it, the registered agent will reject the documents and send them back to you. In such a case, proper service will not have been effectively carried out.

The proper way to address service to a registered agent is as follows (using the Capital One example).

CAPITAL ONE, NATIONAL ASSOCIATION  
UBI NUMBER 603022071  
C/O CORPORATION SERVICE COMPANY  
300 DESCHUTES WAY SW, SUITE 304  
TUMWATER, WA 98501



**PRACTICE TIP:** *You can quickly see that in addition to serving Capital One at its state corporation registered service agent, it would still be wise to also serve an officer of Capital One, which you can accomplish by using a Google search or Edgar-SEC, [www.sec.gov/edgar/searchedgar/companysearch.html](http://www.sec.gov/edgar/searchedgar/companysearch.html). Often you can get the business address registered with the SEC and the names of the officers who are submitting the reports to the SEC as well as their addresses. The point is that a little bit of legwork up front can often lead to ensuring that service is not an issue later on when you are trying to get the default judgment.*

One final word of caution when you are trying to determine exactly who to serve to satisfy Rule 7004(b)(3) – there are a lot of companies with similar sounding names which may actually even be related to one another, but they are still different corporations. For example, Citibank Corp., is not the same as Citibank, N.A. When you are preparing your documents for mailing, it is smart to look very closely at some of the documentation provided by your client to ensure that you have the correct address. It would not be prudent to rely on one of the many addresses for Citibank that you have in your bankruptcy petition prep software database.

### **SERVING THE UNITED STATES OF AMERICA AND ITS AGENTS**

As daunting as it sounds, service on the United States is pretty simple. You are simply jumping through some additional hoops. Even though the United States has adopted the rule that it is OK to sue the King, unlike English law, Congress didn't make it easy for you to find them for purposes of service!

The text of Rule 7004(b)(4) reads as follows:

*Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The court shall allow a reasonable time for*

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*service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States.*

First you have to serve the civil process clerk. You can find the addresses of all civil process clerks in Appendix F. For example, the civil process clerk in the Western District of Washington is:

CIVIL PROCESS CLERK  
OFFICE OF THE UNITED STATES ATTORNEY  
SEATTLE DIVISION  
700 STEWART STREET, SUITE 5220  
SEATTLE, WA 98101-1271

CIVIL PROCESS CLERK  
OFFICE OF THE UNITED STATES ATTORNEY  
TACOMA DIVISION  
1201 PACIFIC AVENUE, SUITE 700  
TACOMA, WA 98402

In addition, you will also need to notice the Attorney General for the United States who at the present time is William Barr (2019). Thus, you would also need to serve:

ATTORNEY GENERAL WILLIAM BARR  
U.S. DEPARTMENT OF JUSTICE

950 PENNSYLVANIA AVENUE, NW  
WASHINGTON, DC 20530-0001

The statute also requires that you serve the agency of the United States, in any action where you are attacking the validity of an order of an officer or an agency of the United States (ex. IRS) even if they are not a party (Rule 7004(b)(4)). However, chances are that in any litigation you are doing you are going to be involved in, you will also need to directly serve the officer or agency of the United States that you are suing in accordance with Rule 7004(b)(5). So, if you are dealing with some tax issues where you are going to serve the IRS, you will also need to serve not only the civil process clerk, but also the Attorney General as well as the actual IRS.

If the federal agency of the United States also happens to be a corporation, then you must also serve in accordance with Rule 7004(b)(3), discussed above. The federal government chartered and owned corporations are a separate set of corporations chartered and owned by the federal government, which operate to provide public services, but unlike the federal agencies ([Environmental Protection Agency](#), [Bureau of Indian Affairs](#)), or the federal independent commissions, they have a separate legal personality from the federal government.

### **SERVING FOREIGN STATES**

28 U.S.C. sec. 1608 governs service on a foreign state or its political subdivision, agency or instrumentality under the Foreign Service Immunities Act of 1976 (Service Abroad upon Foreign States,

Agencies or Instrumentalities).

*The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.*

- Sec. 1602

### **SERVING THE IRS**

The most common form of bankruptcy litigation involving the United States is probably dealing with the IRS. Many times in Chapter 13 cases, we deal with taxes as priority debts, but sometimes, in contested matters, perhaps where we are disputing tax liens or requesting some other form of affirmative relief from the Court, you will also need to serve the IRS, who, helpfully, has set up territories for you to serve.

Your own court district probably has a centralized insolvency location that you can find on your districts bankruptcy court website or by doing a Google search to find your local centralized insolvency center, if necessary.

The common address to notice the IRS is:

INTERNAL REVENUE SERVICE  
CENTRALIZED INSOLVENCY OPERATIONS  
PO BOX 7346  
PHILADELPHIA, PA 19101-7346

Do not make the mistake of serving the Commissioner of the IRS or the Office of Chief Counsel or the area counsel for small business/self-employed entities. These are not valid addresses for service or notice.

### **SERVING THE STATE OR MUNICIPAL LEVEL OF GOVERNMENT**

Rule 7004(b)(6) refers to service upon a state/municipal/other governmental organization. Service is accomplished by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.

Just like with the incompetent/infant rule discussed above, you must take some time to look up the law on how to sue the State Government in the State you wish to serve the documents.

It is beyond the scope of this paper to discuss each State and their own particular methodology. Rather, a more generalized view is taken which does appear to be relatively consistent across most

states. Service on the State can usually be made by service on the attorney general, a deputy assistant, or a clerk as the attorney general's office. Service on other public bodies may be made by serving an officer, director, or managing agent, of the public body.

### **SERVING THE DEBTOR**

Fortunately, serving the debtor is pretty straightforward! Rule 7004(b)(9) allows you to use the petition provided in the address OR to any other such address as the debtor may designate in a filed writing.

PACER is quite good about publishing the address of the debtor on the header of the case docket screen so acquiring the address of the debtor is not a difficult process. It is the duty of the debtor to keep the Court Clerk informed of the current address where the debtor resides. There are specific forms (a synonym for 'filed writing') for this and they are readily available in the Court Clerk's office.

Of course, if you are serving the debtor and the debtor is represented, then you should also serve the debtors attorney which is most likely the rule of your particular State Bar Association as well as Rule 7004(g) and F.R.C.P. 5(b).

### **SERVING THE UNITED STATES TRUSTEE**

Rule 7004(b)(10) allows for service on the United States Trustee WHEN the U.S. Trustee is the trustee in the case AND service is made upon the United States Trustee SOLELY as trustee. Said service

may be accomplished by sending a copy of the motion or summons and complaint to the office of the U.S. Trustee or another place designated by the U.S. Trustee in the district where the case under the code is pending.

### **SERVICE ON AN INSURED DEPOSITORY INSTITUTION**

Rule 7004(h) refers to serving papers on a bank that is FDIC insured, pursuant to Section 3 of the Federal Deposit Insurance Act (the "FDIA"). You can review Section 3 – The Definitions Section, here, <https://www.fdic.gov/regulations/laws/rules/1000-400.html>.

If the bank you are trying to serve is an FDIC institution, then the Bankruptcy Rule makes it pretty clear that the only method of serving documents 'in a contested matter or adversary proceeding shall be made by certified mail address to an officer of the institution'. There are three exceptions, they are:

- (1) If the institution has appeared by and through their attorney. If this is the case, then the attorney may be served by first class mail.
- (2) The Court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officers of the institution DESIGNATED by the institution; or
- (3) The institution has WAIVED in WRITING its entitlement to service by certified mail by designating an officer to receive service.

Please note that Rule 7004(h) specifically states contested matter or adversary proceeding. Unlike the rest of the statute which never actually mentions ‘contested matter’, it is stated with specificity here.

It is clear from the statute, that there are a couple of hurdles to jump through before you rush off a motion or summons and complaint to the bank. Initially, you have to determine if the bank is an insured FDIC institution. This can be deceptive. For example, there are ‘secured’ credit cards issued by some banks which require the debtor to place the amount of the credit line on deposit with the bank. This makes the bank a ‘savings bank’ and thus they most likely come under the definition of an insured institution.

If you are not sure, a list is maintained by the comptroller of the currency here, <https://www2.fdic.gov/idasp>. It is a searchable database, simply type in the name of the bank of holding company you are interested in and click on search. One of the banks in WA State who does business is Umpqua bank. A search on the FDIC site quickly reveals that the FDIC certificate number is 17266, as well as the main city and state of the primary location and the total assets that the bank currently reports to the FDIC.

The search results provide a clickable link to the certificate which gives you an entire suite of links, including current offices, the status of the bank charter, and a uniform bank performance report, which provides you with the main address for the bank. With this information, you can then turn to the State level corporations search to find the ‘officer’ you need to serve.

Continuing with the example of Umpqua bank, the main financial institution address is Umpqua Bank, 445 Southeast Main Street, Roseburg, OR 97470. A search on the Oregon Corporations Search page reveals that the authorized representative for Umpqua bank is Andrew H. Ognall in Portland, OR and One SW Columbia, Suite 1200. A follow up search on Google for Umpqua bank and Andrew H. Ognall reveals that Mr. Ognall is the Executive Vice President and General Counsel effective May 1, 2014. Mr. Ognall reports directly to CEO Ray Davis who is based out of the Roseburg main headquarters.

Armed with all of the above information, and knowing that the statute CLEARLY states that service shall be upon an OFFICER of the institution, the proper address for service is going to be as follows:

RAY DAVIS – CEO	ANDREW H. OGNALL – EXEC. VP
UMPQUA BANK	UMPQUA BANK
445 S.E. MAIN STREET	ONE SW COLUMBIA ST, STE 1200
ROSEBURG, OR 97470	PORTLAND, OR 97258

The only service method permitted by Rule 7004(h) is CERTIFIED mail. The words ‘first class mail’ are notably absent from this section, but stated with specificity in the exceptions section. See Rule 7004(h)(1) and 7004(h)(2).

### SERVING A CREDIT UNION

Credit Unions are a different animal from national and state chartered banks insured under the FDIC. There are arguments both for and against Rule 7004(h) applying to credit unions. 11 U.S.C. Sec. 101(35)(B) defines 'insured depository institution' to include and 'insured credit union (except in the case of paragraphs 23 and 35 of this subsection).' *In Re Fisher*, No. 08-80111-JAC-13, 2008 WL 4280388 (Bankr. N.D. Ala. Sept 12, 2008).

The argument against this position is that the language in the definitions of section 101 does not match the language used in Rule 7004(h). Rule 7004(h) refers to an 'insured depository institution (as defined in Section 3 of the FDIA)'. Credit Unions are not insured under the FDIA, but rather under Title II of the National Credit Union Act, 12 U.S.C. sec(s). 1781-1790.

The issue then, is whether, Rule 7004(h) applies to credit unions. There are arguments both for and against. It is this authors opinion that the best practice is to treat the credit union as if Rule 7004(h) applies and serve the officer of the bank via certified mail.

## CONCLUSION

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Service is a necessary and proper part of the bankruptcy process. All entities are required to receive service who will be adversely affected by the machinations of each bankruptcy case. This is the core concept of due process under our justice system. In almost every area of law, service requirements are far more stringent than those required in bankruptcy. By closely following the rules and ensuring that service is accomplished in accordance with the rules, the bankruptcy court has no choice but to continue to observe and construe the rules in favor of the current system. Our failure to follow the rules, cut corners, and scrimp for economic reasons where there is no reason to do so, will eventually result in the Court and various rules committees adopting new rules that will usurp the convenience and thoroughness of todays system with something that shows 'receipt' of documents. This will mean greatly increased costs and loss of efficiency. It is in our own interest to continue to utilize first class mail delivery as an effective means of showing service of process.

# Faculty

**Jay S. Jump** is the founding principal of The Jump Law Group, a consumer bankruptcy firm in Pasco, Wash., as well as CEO of CertificateofService.com, a mailing and notice service for bankruptcy professionals around the nation. He began practicing bankruptcy law in the Eastern and Western Districts of Washington in the late 1990s using technology to automate many of the functions that a bankruptcy attorney had to complete to get a successful case to discharge. This automation led to the creation of CertificateofService.com in 2005, when Mr. Jump became frustrated by the overwhelming amount of mail that had to go out every day in his chapter 13 practice. What started in the back corner of the law office 16 years ago has expanded to the premiere mailing service for more than 4,700 debtor and creditor firms, panel trustees, and chapter 13 trustees. Along the way, he has been a frequent speaker at the various bankruptcy conventions, has written several articles regarding law office automation and technology application, and assists with connecting bankruptcy practitioners with partners who can bring their practices to a higher level of productivity. Mr. Jump received his undergraduate degree from the University of Arizona and his J.D. from Gonzaga Law School.