

ECF Informer

ISSUE 17

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NOTICE AND OPPORTUNITY FOR A HEARING

Local Rule 9013-2, Motion Practice - Opportunity for a Hearing created a new procedure for bankruptcy practitioners. The new procedure for notice and an opportunity for a hearing are intended to promote efficiency, economy and provide a framework for resolving issues without a need for conducting an actual hearing. This new procedure should benefit attorneys because it will minimize the amount of time needed to monitor, strike, and/or attend a hearing. The Court will benefit because less time will be required to prepare for hearings which are eventually stricken from the Court's calendar.

Procedural steps for notice and an opportunity for a hearing change very little from traditional practices. This procedure should be used for routine matters which would typically be set on the Court's law and motion calendar, or if the movant believes that the matter will be uncontested. Movants reserve a hearing date and time via the Preset Calendar report available under the Reports Menu in CM/ECF. Although no presets are currently available for Adversary, Chapter 9, Chapter 12 or Chapter 11 matters, e-filers may still use this procedure after calling the court scheduling clerk to get a hearing date and time.

Through the filing of the event Notice and Opportunity for Hearing, the movant reserves the hearing time but the actual hearing is not set on the Court's calendar. The hearing is placed in an inactive status on the respective Judge's calendar. If no objection is filed by the objection deadline, the movant may file an application for entry of order along with an order. There is no need to contact the court to strike the "reserved-inactive" hearing date.

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DATE CERTAIN FOR OBJECTION PERIOD

In order to be in compliance with the Federal Rules of Bankruptcy Procedure and with Local Rules 9013-1 and 9013-2, please start placing a DATE CERTAIN for any objection period(s) that you may be conveying to other entities in a particular case. This is especially important when one uses either notice of hearing or notice for opportunity for hearing. The Court is insisting that notices used in this district are clear and concise. Having litigants use date(s) certain instead of just listing time periods is a big step toward fulfilling that goal. Forms found in the appendices of the local rules are created taking into account this "date certain" philosophy, and CM/ECF has also been altered in order for date(s) certain to be placed in entries.

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NOTICE OF [MOTION TO] [APPLICATION FOR] [OBJECTION TO CLAIM] AND NOTICE OF HEARING

9013-1 (Objection Deadline: _____) (Hearing Date: _____)

NOTICE OF [MOTION TO] [APPLICATION FOR] [OBJECTION TO CLAIM] AND NOTICE OF OPPORTUNITY FOR HEARING

9013-2 (Objection Deadline: _____)

NOTICE AND OPPORTUNITY FOR A HEARING

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A hearing may move from an inactive to an active status if: an objection is filed; the Court files a “Clerk’s Notice of Set Hearing; or, a party in interest files a “Request for Hearing”. The filing of an objection or response automatically moves the hearing from an inactive to an active status. The Court may file a Clerk’s Notice of Set Hearing if the Judge determines that further clarification or argument is needed, or to fix a docketing mistake. Parties will become aware of the Clerk’s Notice of Set Hearing via their ECF notification email and will be required to attend the hearing. Finally, any party in interest may file a “Request for Hearing” which moves the hearing to an active status. Parties will be required to attend the hearing and will become aware of the Request for Hearing via their ECF notification email. The Request for Hearing event should be used sparingly, and usually when the need for a hearing has risen since the expiration of the objection period.

A video training module has been prepared to explain this procedure and provides an e-filer a step by step walk through of how to utilize Notice and Opportunity for Hearing. The training module may be viewed on the Court’s website at www.utb.uscourts.gov. The training module can found on the Home tab and is identified as “Training: Notice and Opportunity for a Hearing Training Module” or on the Local Rules tab.

NEW EVENT: CHAPTER 11 BALLOT

We have created a Chapter 11 Ballot event code for electronic filers to use (due to mandatory e-filing). Please note that this event should be used when the ballot being filed is to be filed with the **clerk's office** and not with the **attorney of record**. If the ballots are to be filed with the court, the case administration clerks will tally all the e-filed ballots. After the deadline to file ballots has passed, the event code Chapter 11 Ballot Register and Report of Balloting will be entered on the docket.

SUMMARY OF SCHEDULES AND/OR STATISCAL SUMMARY OF CERTAIN LIABILITIES

There has been a recent upsurge of efilers using the event code **Summary of Schedules and/or Statistical Summary of Certain Liabilities** when filing Statement of Affairs and Schedules in a case. Please do not use the "Summary" event code when filing full Statement of Affairs and Schedules. The Summary is a one page statistical requirement (if the debtor has primarily consumer debts) that is usually filed with the schedules, but sometimes is filed separately. It is important to use the correct code when filing Statement of Affairs and Schedules because of potential errors that could occur with 521 dismissals once 45 days from filing has expired.

USING THE EVENT "SUPPORT DOCUMENT" MAY BE THE ANSWER

Occasionally, an electronic filer discovers, only too late, that they have forgotten an attachment, made a small error, or would like to add a supplemental document to a filing. It may not be necessary to withdraw the document, or submit a full amended document. The ECF system has an event known as "Support Document" available that can be used in many instances, to add to a document already on file with the Court. The event is found in the aptly titled "Other" category, under the Bankruptcy Menu or the "Notices/Other" category under the Adversary Menu. The system will allow the e-filer to enhance the entry and also link to the previously-filed document, to further clarify the intent.

Examples of how this event can be used may include:

- attaching a supplemental document such as notice or exhibit, (copy of a trust deed or note) added to a motion;
- An addition of omitted information or pages that may not constitute an amendment or completely new filing;
- slight correction or clarification within a document.

NOTICE OF ENDORSEMENT

The event Notice of Endorsement is designed to expedite the process of getting parties to sign or give their approval of documents that have been filed via CM/ECF. This event is available under the Bankruptcy menu and the Notices category within CM/ECF. The event is identified as "Notice of Endorsement (No Image)" thereby indicating that it will not be necessary to create an actual pleading. E-filers may use this event to essentially "sign" giving their approval electronically of a document that has already been filed by another e-filer. For example if two parties come to an agreement on a pending order, one of those parties may file the pending order via CM/ECF. Upon filing of the document, the other party may use the event Notice of Endorsement to approve the language in the pending order.

DEADLINE TO OBJECT TO DEBTOR'S DISCHARGE

In case you noticed this, or even if you did not, as of December 1, 2010 the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors & Deadlines has changed slightly, in that the notice now has a reference to a deadline to Object to Discharge. The notice reads: "**Deadline to Object to Debtor's Discharge or to Challenge Dischargeability of Certain Debts:**"

This slight alteration is based on the change nationally to F.R.B.P. 4004(a) which imposes a deadline on an entity to object to a discharge based on previous filings and receiving a previous discharge within a finite period of time from the present case. This action can be filed as a motion and also holds true in Chapter 7 cases.

DIFFERENCE BETWEEN PACER AND CM/ECF

The two terms PACER and CM/ECF are often used synonymously by electronic filers when, in fact, the two terms have different definitions. PACER, also known as Public Access to Electronic Court Records, is an electronic public access service that allows users to obtain case and docket information from the federal appellate, district and bankruptcy courts. Any individual may obtain PACER access by registering at www.pacer.gov. With PACER access, users may view pleadings but do not have the capability to file pleadings electronically. Upon access to PACER, a user's menu bar will look like this:



Although CM/ECF appears in the corner of the menu bar, users are logged into to PACER only at this point and do not have access to file pleadings electronically.

CM/ECF, also known as Case Management/Electronic Case Files, is the official Court Electronic Document Filing System. Only registered users who have applied to the court and have complied with the training requirements may have access to CM/ECF. The court offers two types of filing accounts: 1) Attorney Filer – full access to CM/ECF to file all types of pleadings; 2) Limited Filer – for those who only file proofs of claim. CM/ECF accounts are issued to individuals whereas a PACER account may be an individual, firm or company account. Upon access to CM/ECF, a user's menu bar will look like this:



Notice the added menus of Bankruptcy, Adversary and Search. With this menu bar, a user now has access to CM/ECF to file documents electronically.

NEW EVENT: ATTORNEY'S REQUEST FOR NO FUTURE NOTICE

The Clerk's office has created a text event to be used by practitioners when they no longer have an interest in receiving email notifications of pleadings filed in a particular case: Attorney's Request for No Future Notice.

The final text reads. "Attorney's Request to be removed from list of parties to receive electronic filing notices in this case. The attorney acknowledges that no further email notices of documents filed in this case will be sent to the attorney by the Court. Filed by Name of Attorney"

Please realize this event **cannot** be used to withdraw as the attorney for debtor(s). It is to be used only when interest in the case no longer warrants receiving email of pleadings being filed.

NEW ONLINE ASSISTANCE



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We're on the web at
www.utb.uscourts.gov



The Court has implemented a new feature on the Court's website and within the CM/ECF system – the ability to obtain help online by “chatting” with a case administrator or someone from the training department at the court. The Court has purchased a license with Provide Support and this feature has been placed on the Court's website toward the top of the site. So what does this feature do for you?

If you are on the website or more likely, within the CM/ECF system and you have a question, you have the ability to click the icon and then start a chat session with someone here within the Court; that individual will be able to assist you with your questions. This feature is also available for an external customer who may have a general question concerning the filing of a bankruptcy. The chat feature also allows you to leave an email with the Court if there are no available operators signed into the support system.

When there is an operator logged into the chat system, the icon will indicate that there is Live Support Online and you will simply click to talk with someone; if no one is logged in, the icon will indicate that the Live Support is Offline and to leave a message. When there is someone logged in and you click on the icon, you will then have the ability to see what departments are online, giving you the ability to speak with one of them.

The Court is hoping that this new feature will prove to be a great new tool to assist you when questions arise and immediate help would be nice. The system will also allow us to track the number of “calls” and then expand the chat system to meet the needs of those requesting assistance. We hope that all of you will find this feature a great tool.

