

NOTICE

Re: Service of motions to avoid lien(s)

Hon. C. Kathryn Preston

October 30, 2014

Effective December 1, 2014, in cases assigned to Judge Preston, service of all motions to avoid liens pursuant to 11 U.S.C. § 506 or § 522(f) that are filed on or after this date **MUST** comply with Federal Rule of Bankruptcy Procedure 9014(b) and Local Bankruptcy Rule 4003-2. The motion, notice and supporting documents must be served on the holder of the lien to be avoided in the same manner as service of a summons and complaint under Federal Rule of Bankruptcy Procedure 7004 in addition to the service requirements of Local Bankruptcy Rule 4003-2.

Federal Rule of Bankruptcy Procedure 9014(b) requires that “[t]he motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined under Rule 9006(d).” For proper service of a summons, *see generally* B.R. 7004 and FRCP 4. Some common service rules:

- (i) Service upon the debtor must also be made upon debtor's counsel;
- (ii) Service upon a business entity must be directed to an officer, managing or general agent, or other agent authorized to receive service of process;
- (iii) With certain exceptions, service upon an FDIC insured financial institution must be made by certified mail on an officer of the institution;
- (iv) Service upon the United States must include service upon the local US Attorney and upon the United States Attorney General.

The following FDIC locator tool may be helpful in determining whether an entity is an FDIC insured institution: <http://www2.fdic.gov/idasp/main.asp> or <http://research.fdic.gov/bankfind/>

For proper service under Local Bankruptcy Rule 4003-2, *see generally* L.B.R. 4003-2.

Please be advised that service must satisfy both L.B.R. 4003-2 and B.R. 7004. It will not be sufficient if service of the motion to avoid lien only complies with B.R. 7004. Thus, in addition to effectuating service under B.R. 7004, please be sure to serve the lienholder as required by L.B.R. 4003-2 at the addresses as set forth in the following:

- a. the lienholder's address as set forth in the lienholder's proof of claim;
- b. a notice of appearance, or other paper filed in the case;
- c. the lienholder's attorney of record if such attorney's name and address is clearly identified on the proof of claim, notice, or other paper; or
- d. the lienholder's address as set forth in the debtor's schedules.

Parties should reference L.B.R. 4003-2 to determine whether the lienholder needs to be served at all of the addresses listed above or a combination thereof. In addition, if the movant elects to serve the lienholder at an address other than what is indicated in L.B.R. 4003-2, then an explanation for

using a different address must be provided in the motion to avoid lien.