

The attached memorandum was sent to Bankruptcy Court practitioners in the Middle District of Georgia on September 14, 2016. Two comments were made by attorneys in addition to the proposed rule. The first asked that we also require the Sender of the notice to put their email address on the form in addition to other required information (a common practice anyway but until now not required). Secondly, an attorney asked that the hearing date, time, and location be bolded and centered to make it more conspicuous to the reader. The judges agreed with these changes and they were incorporated into the final rule. The rule became effective on October 17, 2016.



MEMORANDUM

To: Bankruptcy Practitioners in the Middle District of Georgia
From: Kyle George, Clerk of Court
Subject: Proposed Change to LBR 9004-1

September 14, 2016

1. The judges of this court would like to make changes to LBR 9004-1 (Documents and Pleadings – Requirements of Form). This rule specifies the format and mandatory language certain notices must contain, among other requirements.
2. There are three major reasons for the changes. The first is that over the years, the forms have been overly “capitalized” and bolded to the point where nothing stands out as more significant language in the notice. The intent of the change is to make each notice easier to read and to clarify the most important parts of the form, such as the suggestion to get an attorney; hearing location, dates, and times; and other information. The goal is to keep the notice at one page for efficiency. The second reason is to ensure the recipient of the notice knows what procedures to take if a copy of the motion or other type of pleading is not served concurrent with the notice. Finally, the rule will now indicate that a list of all “negative notice” events will be maintained in the Clerk’s Instructions.
3. Rather than providing a red-line version of the old and the new rule, I have attached a copy of the rule as it will look when complete. Please refer to our Local Bankruptcy Rules published on our public website at www.gamb.uscourts.gov. I have highlighted the language that has been added for easier review.
4. Please review the proposed local rule change. I would very much appreciate comments back to me via email no later than October 15, 2016. My email address is Kyle_George@gamb.uscourts.gov. Your assistance in this matter is greatly appreciated.

LBR 9004-1. Documents and Pleadings – Requirements of Form

(a) Multiple Requests for Relief.

(1) Motions for relief from stay may not be combined with other forms of relief, except those allowed by §§ 362 and 1205. Motions for relief from stay allowed by § 1301 may be combined with motions pursuant to § 362.

(2) Objections to confirmation of a Chapter 13 plan may not be combined with other requests for relief.

(b) Waiver of Requirements of § 362(e).

Any waiver of the 30-day requirement of § 362(e) by the movant shall be recited in the motion and set out in the title of the motion.

(c) Notices - Form. All notices served shall substantially conform to the following directives:

(1) Method of Service. Every notice shall be set out as a separate document from any associated pleading except that a certificate of service may be combined with the notice. The notice may be served separately. If served with an associated pleading, the notice shall be the first page or pages of the service packet. However, the notice may be combined with a short pleading if both can be contained on a single page.

(2) Designated Authority for a Notice. The notice shall contain language that identifies the authority of the sender for originating the notice by indicating whether the notice is being sent by direction of the Court or pursuant to a Local Bankruptcy Rule, Federal Rule of Bankruptcy Procedure, or the Bankruptcy Code. The appropriate citation for any rule or code section shall be specified in the notice.

(3) Identity of Sender and Court. The notice shall clearly identify the sender by name, address, **email address**, and telephone number. The notice shall also set out the name, mailing address, and phone number for the Clerk's office.

(4) Required Notice Caption. Each notice shall be captioned as it appears on any associated pleading or petition and shall substantially comply with the requirements of FRBP 9004(b).

(5) Mandatory Language.

(A) The language described below in LBR 9004-1(c)(5)(B) shall be used in events not specifically requiring a hearing (“Negative Notice” events) in the Court’s electronic case filing system. A listing of all current Negative Notice events and events that require a hearing can be found in the Clerk’s Instructions.

(Remainder of page intentionally left blank)

(B) Notice of Motion or Objection Other Than Objections to Claims. Unless a hearing is specifically required for the matter being noticed, notice and an opportunity for hearing as contemplated by LBR 9007-1 may be accomplished by the inclusion of the following language presented conspicuously in the notice:

NOTICE OF MOTION

(Movant) HAS FILED DOCUMENTS WITH THE COURT TO [relief sought in motion or objection].

YOUR RIGHTS MAY BE AFFECTED. You should read these documents carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one. If not served with this notice in accordance with the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, a copy of the motion [or other type of pleading] may be obtained upon written request to counsel for the Movant (identified below) or at the Clerk's office.

If you do not want the court to [relief sought in motion or objection], or if you want the court to consider your views on the [motion][objection], then you or your attorney shall file with the court a written objection or response on or before **[Enter date from the Court's Hearing Scheduler program (CHS) found at www.gamb.uscourts.gov]**. The objection or response should be sent to:

[Clerk, U. S. Bankruptcy Court
Middle District of Georgia
P. O. Box 1957
Macon, Georgia 31202]

or

[Clerk, U. S. Bankruptcy Court
Middle District of Georgia
P. O. Box 2147
Columbus, Georgia 31902]

If an objection or response is filed, a hearing on the [motion or objection] shall be held on:

[Date of Scheduled Hearing] at [Time] at the [Location/Address].

If you mail your response or objection to the court for filing, you shall send it early enough so the court will **receive** the objection or response on or before the response date stated above.

Any response or objection shall also be served on the movant.

If you or your attorney does not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting relief.

This notice is sent by the undersigned pursuant to [Enter here the Local Rule, Federal Rule, or other legal authority for issuing this notice.]

Dated this _____

[Attorney Information]

(C) Notice of Objections to Claims. The following language shall be presented conspicuously in the notice of objection to claims:

[Objecting Party] HAS FILED AN OBJECTION TO YOUR CLAIM IN THIS BANKRUPTCY CASE.

Your claim may be reduced, modified, or eliminated. You should read these documents carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one. If not served with this notice in accordance with the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, a copy of the motion [or other type of pleading] may be obtained upon written request to counsel for the Movant (identified below) or at the Clerk's office.

If you do not want the court to eliminate or change your claim, then you or your attorney shall file with the court a written response to the objection on or before **[Enter date from the Court's Hearing Scheduler program (CHS) found at www.gamb.uscourts.gov]**. The objection or response should be sent to:

[Clerk, U. S. Bankruptcy Court
Middle District of Georgia
P. O. Box 1957
Macon, Georgia 31202]

or

[Clerk, U. S. Bankruptcy Court
Middle District of Georgia
P. O. Box 2147
Columbus, Georgia 31902]

If a response is filed, a hearing on the objection to your claim shall be held on:

[Date of Scheduled Hearing] at [Time] at the [Location/Address].

If you mail your response to the court for filing, you shall send it early enough so the court will **receive** the response on or before the response date stated above.

Any response shall also be served on the objecting party.

If you or your attorney does not take these steps, the court may decide that you do not oppose the objection to your claim.

This notice is sent by the undersigned pursuant to [Enter here the Local Rule, Federal Rule, or other legal authority for issuing this notice.]

Dated this _____

[Attorney Information]

(6) Notice of Hearing on All Other Matters. If a hearing is required to be held concerning any matter other than one provided for under LBR 9007-1(c), the notice of hearing shall be served with the motion on all interested parties and shall include the following language presented conspicuously in the notice:

NOTICE OF HEARING

(Movant) HAS FILED DOCUMENTS WITH THE COURT TO [relief sought in motion or objection].

YOUR RIGHTS MAY BE AFFECTED. You should read these documents carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one. If not served with this notice in accordance with the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, a copy of the motion [or other type of pleading] may be obtained upon written request to counsel for the Movant (identified below) or at the Clerk's office.

If you do not want the court to [relief sought in motion], or if you want the court to consider your views on the [motion], then you or your attorney shall attend the hearing scheduled to be held on

[Date of Scheduled Hearing] at [Time] at the [Location/Address]. [Enter date from the Court's Hearing Scheduler program (CHS) found at www.gamb.uscourts.gov].

If you or your attorney does not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting relief.

This notice is sent by the undersigned pursuant to [Enter here the Local Rule, Federal Rule, or other legal authority for issuing this notice.]

Dated this _____

[Attorney Information]