

UNITED STATES BANKRUPTCY COURT

OFFICE OF THE CLERK
CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD, ILLINOIS 62701

KHADIJIA V. THOMAS
CLERK

226 U.S. COURTHOUSE
600 EAST MONROE STREET
217.492.4559

January 9, 2013

Dear Chapter 7 Case Trustees:

Re: Self-Noticing by Chapter 7 Trustees – Change in Procedures Effective February 4, 2013, for Springfield division

I am writing to provide information and instructions regarding additional pleadings and documents which Chapter 7 Trustees in the Springfield Division will be required to self-notice as of Monday, February 4, 2013. Trustees will now be required to self-notice Applications to Employ, Applications for Compensation, Reports of Sale, Notices of Intent to Abandon, Motions to Pay and Final Reports for all cases in the Springfield Division. As you know, Springfield Trustees have previously been instructed to self-notice Notices of Intent to Sell, Motions and Notices of Compromise and Motions for Interim Distributions.

These changes in noticing practices are coming at the urging of the Administrative Office of the U.S. Courts in an effort to reduce costs associated with the Bankruptcy Noticing Center (“BNC”). The BNC was established in 1994 to provide assistance to Bankruptcy Clerks in meeting their obligations set forth in the Code and Rules to provide certain notices. Over time, many courts have recognized the efficiencies of the BNC and have undertaken to notice matters beyond what they are obligated to do pursuant to specific provisions of the Code and Rules. However, due to current fiscal issues and reduced funding for all court operations, Clerks are now being asked to review their noticing practices and to return to the parties noticing responsibilities for matters not specifically assigned by the Code or Rules to the Clerk.

Copy and postage costs associated with the new noticing procedures may be claimed for expense reimbursement on final reports. We have noted that some Trustees appear to be sending complete copies of their certificates of service along with their notices. A certificate of service must be filed with the notice or other document served but it need not be served on all parties. This practice of sending the additional two or three pages of service information with every notice raises copy and postage costs unnecessarily and should be discontinued.

Judge Gorman recognizes that there are also internal staff costs in your offices associated with the additional noticing. Those costs along with the reimbursable out-of-pocket expenses for the noticing should be considered in making decisions about whether to pursue assets. Some Trustees have already discovered that sending the notices associated with liquidating assets can cost hundreds of dollars. The reality is that even with the reduced costs of the bulk operation of the BNC, mailing costs in cases with a large number of creditors often run into thousands of dollars. Asset cases in the Springfield Division must now bear their own costs and when estate assets are insufficient to cover the costs of liquidation, an estate should not be opened. Likewise, individual assets should not be pursued where the costs involved exceed the benefit to the estate.

The following instructions should provide guidance on our new noticing procedures. Comments about legal issues related to pleadings, notices and other documents come from Judge Gorman.

Applications to Employ

All Applications to Employ should contain all of the information required by Fed. R. Bankr.P. 2014(a). A verified statement must also be filed with every Application and must contain all of the information required by Fed. R. Bankr. P. 2014(a). Many of you have updated your verified statement forms but we continue to see out-of-date forms particularly when the professionals being hired are appraisers or real estate brokers. Please make sure that you have a form that fully complies with the Rule and that form is used for all Applications.

Care should also be taken in completing the verified statements of the professionals. Every connection to a party in interest is not disqualifying but every connection must be disclosed. In many cases, the professional to be employed has prior connections with the debtor - having represented the debtor in the personal injury lawsuit before the bankruptcy was filed or having already listed the debtor's house for sale. Likewise, many times an accountant or auctioneer has multiple engagements for the same trustee and, therefore, has a connection to the trustee who is a party in interest. All of these connections must be disclosed. If questions arise later about the services rendered or the compensation requested, any discrepancies in the verified statement of the professional could be considered in resolving such issues.

You should also be aware of Fed. R. Bankr. P. 2014(b) which provides that if an attorney or accountant is employed, other attorneys or accountants in the firm may also bill time in the case. Accordingly, you do not need to formally employ everyone in a firm who will work on a case. But, if you choose to employ multiple persons from a firm - and many of you choose to do so - then you must complete a verified statement for every professional specifically employed.

Both the Application and Objection Date Notice should contain a certificate of service evidencing service on the UST and the debtor's attorney, if represented, or on the debtor, if pro se.

File the Application to Employ with certificate of service as follows:

[Bankruptcy>Motions/Applications>Select the Employ event> continue to complete e-filing the Application to Employ.](#)

Prepare an Objection Date Notice with a certificate of service giving not less than 14 days notice to object to the Application to Employ as follows:

[Bankruptcy>Trustee/US Trustee>Notice of Objection Ddl re: Motion to Employ \(Spfld Ch 7 Trustees\)>Browse to upload the appropriate Notice in pdf format>Select the appropriate event to which the Objection Date Notice relates>Select Next, verify the Objections Date calculated in ECF> continue to select Next to complete e-filing the Notice.](#)

Applications for Compensation

Applications for compensation should comply with requirements of Fed. R. Bankr. P. 2016. *See also* 11 U.S.C. 330. Cost reimbursement claims must be specifically itemized. Judge Gorman has issued a number of Opinions on the requirements to obtain awards of fees and costs and those should also be consulted.

Applications for compensation should be filed before the filing of a final report which incorporates payment of the professional fees. As trustees will now be noticing their own final reports, it may be wise to wait until fees are specifically approved before noticing a final report.

Trustees have been previously instructed that when a professional such as an auctioneer or broker is hired on a commission basis for a sale of estate assets, no Application is required. That remains the same. Those fees can be approved when included in a report of sale which will be discussed in more detail below. Likewise, most costs associated with sales can be approved in a report of sale.

The complete Application for Compensation must be served on the UST and on the debtor's attorney, if represented, or on the debtor, if pro se. A certificate of service evidencing such service must be filed with the Application.

If the total compensation - fees and costs - requested for the professional is \$1000 or less, the Objection Date Notice may be served only on the UST and the debtor's attorney, if represented or the debtor, if pro se. If the total compensation exceeds \$1000, the Objection Date Notice must be served on the entire matrix with the exception that if a claims bar date has run, notice does not need to go to unsecured creditors who did not file claims.

File the Application for Compensation with certificate of service as follows:

[Bankruptcy>Motions/Applications>Select the Compensation event> continue to complete e-filing the Application for Compensation.](#)

Prepare an Objection Date Notice with a certificate of service giving not less than 21 days notice to object to the Application for Compensation which complies with Fed. R. Bankr.P. 2002(c)(2) as follows: [Bankruptcy>Trustee/US Trustee>Notice of Objection Ddl re: Report of Sale and Apic to for Compensation \(Spfld Ch 7 Trustees\)>Browse to upload the appropriate Notice in pdf format>Select the appropriate event to which the Objection Date Notice relates>Select Next, verify the Objections Date calculated in ECF> continue to select Next to complete e-filing the Notice.](#)

Reports of Sale

Reports of sale must be filed pursuant to Fed. R. Bankr. P. 6004(f)(1). Reports of Sale must be served on the UST and should also be served on debtor's attorney, if represented, and on the debtor, if pro se. Because Clerk's office staff traces for a Report of Sale whenever a Notice of Intent to Sell has been filed, a report of no sale should be filed if a sale is cancelled. Reports of

Sale do not have to be noticed and the Rules do not require court approval. The “confirmation” of a sale is not provided for by the Rules and is not required.

As you have been previously notified, however, in order to make sales more efficient, when you have retained an auctioneer or broker who will be paid a percentage commission (or minimum flat fee) and expenses which are customary and have been outlined, at least generally, in the Notice of Intent to Sell, then you may pay all such fees and expenses at closing and obtain approval for the payments by the use of a Report of Sale. This avoids the necessity of doing a separate Application for Compensation for the fees and costs.

When a Report of Sale is used to obtain approval of professional fees, the content of the notice, the amounts of notice time and the entities entitled to notice are the same as set forth above for Applications for Compensation.

File the Report of Sale with certificate of service as follows:

[Bankruptcy>Trustee/US Trustee> Select the Report of Sale event> continue to complete e-filing the Report of Sale.](#)

Prepare an Objection Date Notice with a certificate of service giving not less than 21 days notice to object to the Report of Sale as follows: [Bankruptcy>Trustee/US Trustee>Notice of Objection Ddl re: Report of Sale and Aplc for Compensation \(Spfld Ch 7 Trustees\)>Browse to upload the appropriate Notice in pdf format>Select the appropriate event to which the Objection Date Notice relates>Select Next, verify the Objections Date calculated in ECF> continue to select Next to complete e-filing the Notice.](#)

Notices of Intent to Abandon

Springfield Chapter 7 Trustees currently prepare Notices of Intent to Abandon which include objection date language. Trustees upload the Notices and the Clerk’s office staff inserts the objection date and mails the Notice through the BNC.

Chapter 7 Trustees should now insert an objection date not less than 14 days after the Notice will be mailed. Service of the Notice of Intent to Abandon should be made on the entire matrix with the exception that if a claims bar date has run, service does not need to be made on unsecured creditors who did not file claims.

Complete the Notice of Intent to Abandon with the certificate of service giving not less than 14 days notice to object to the Notice as follows: [Bankruptcy>Trustee/US Trustee>Notice of Intent to Abandon \(Springfield Ch. 7 Trustees only\)>Browse to upload the Notice of Intent in pdf format>Select Next, verify the Objections Date calculated in ECF>continue to select Next to complete e-filing the Notice.](#)

Motions to Pay

The Code does not specifically provide for Motions to Pay. In many cases, these Motions are used to obtain comfort orders or to supplement other motions or notices. Motion to Pay are frequently filed when a Trustee has not adequately set forth the terms of a proposed compromise or sale in the initial documents filed and then decides that additional authority is needed to complete the compromise or sale. Further, Motions to Pay are sometimes filed to seek authority to make a distribution such as paying debtors their exemption amounts from sale or settlement proceeds even though there is no question but that the exemption must be paid and notice that the exemption is to be paid could have - and should have - been included in the original Notice of Intent to Sell or Motion to Compromise.

Generally, the matters set forth in most Motions to Pay would be more properly addressed by the filing of more detailed Notices of Intent to Sell or Motions to Compromise. In some cases where new details present themselves after initial approval to sell or settle has been obtained, the proper method to address such changes would be to file an Amended Notice of Intent to Sell or Amended Motion to Compromise rather than a Motion to Pay.

To the extent that Motions to Pay continue to be filed, Trustees must notice them and must prepare and serve an objection notice. The amount of notice time and the parties to be served will vary depending on what is proposed to be paid. For example, a Motion to Pay which really is a supplement to a Motion to Compromise should be noticed and served in the same manner as the Motion to Compromise.

File the Motion to Pay with certificate of service as follows:

[Bankruptcy>Trustee/US Trustee>Select the Pay event>continue to complete e-filing the Motion to Pay.](#)

Prepare an Objection Date Notice with a certificate of service providing the appropriate amount of time to object to the Motion to Pay as required by the Rules:

[Bankruptcy>Trustee/US Trustee>Notice of Objection Ddl re: Motion to Pay \(Spfld Ch 7 Trustees\)>Browse to upload the appropriate Notice in pdf format>Select the appropriate event to which the Objection Date Notice relates>Select Next, insert the appropriate Objections Date in ECF> continue to select Next to complete e-filing the Notice.](#)

Final Reports

Currently, Chapter 7 Trustees File their Final Report and Application for Compensation and separately docket their Notice of Trustee's Final Report and Application for Compensation. The Notice contains objection date language but Trustees have been instructed not to fill in the date on the Notice and the Clerk's office staff has been creating a separate objection notice.

Chapter 7 Trustees should now fill in the date on the Notice on the line for "Date Mailed." The Notice itself says objections are due in 21 days.

The completed Notice should be served on the entire matrix. See Fed. R. Bankr. P. 2002(f)(8). A certificate of service must be filed with the Notice as follows: Bankruptcy>Trustee/US Trustee>Notice of Trustee's Final Report, Apic for Compensation and Ddl to Obj (NFR)(Spfld Ch 7 Trustee)>Browse to upload the appropriate Notice in pdf format>Select Next, verify the Objections Date calculated in ECF>continue to select Next to complete e-filing the Notice.

With respect to the new noticing procedures, Clerks' office staff will do only limited review of documents as they are filed. Staff will not review for compliance with the legal requirements for the various documents. Generally, documents will not be sent to chambers for review until objections dates have passed and orders have been submitted.

We remain open to your questions and suggestions as they relate to these new noticing practices. If there are additional ECF events which you believe should be added to facilitate your filings or if you have suggestions for combining ECF events, please contact me at 217-492-4559 or via email at khadijia_thomas@ilcb.uscourts.gov.

Sincerely,
Khadijia V. Thomas
Khadijia V. Thomas
U.S. Bankruptcy Clerk

cc: Judges, United States Bankruptcy Court, Central District of Illinois
Nancy Gargula, U.S. Trustee, Office of the U.S. Trustees
Timothy Ruppel, Assistant U.S. Trustee, Office of the U.S. Trustees