

MEMORANDUM

To: Terence H. Dunn, Clerk of the United States Bankruptcy Court for the District of Oregon
From: Ad Hoc Local Rules Committee of the Debtor-Creditor Section of the Oregon State Bar
Subject: Service of Main-Case Orders; SRN (5/12/05)
Date: February 8, 2007

I. INTRODUCTION

This memorandum supplements the committee's memorandum of December 18, 2006, commenting on the committee's suggested revised local bankruptcy rules for this district.

After entering a main-case order, at least in response to a motion, the court mails to the individual who lodged the order the court's form SRN (5/12/05), "Notice of Requirement to Service Documents" (the "SRN"), and a copy of the order. Among other things, the SRN states that the recipient must "comply with Local Bankruptcy Rule (LBR) 2002-1" and serve the order "on ALL interested parties."

The committee suggests the following regarding the SRN's service requirement.

II. THE SRN AND CURRENT RULES AND PRACTICE

The SRN does not define the "interested parties" on whom an order must be served. Nothing in current LBR 2002-1 requires that orders be served on anyone. Current LBR 2002-1.H states that "LBR 9021-1.A. applies to resulting orders." Current LBR 9021-1.A, entitled "General Requirements Re: Proposed Orders or Judgments," requires the following in paragraph 3:

3. Notice of Entry. Except as provided in LBR 9021-1.A.4., any party lodging or otherwise submitting a proposed order or judgment shall also include:

a. in the lower left corner of the bottom of the last page of the document, the notation "cc:" followed by a column listing the names of all interested parties who will receive a copy of such document; and

b. a list of names and addresses of all parties requiring conventional paper service, followed by, if filed by an ECF Participant, a clearly identified list of the names of all parties requiring service that will be served electronically via ECF, attached at the end of the document (*e.g.*, *see* the Administrative Procedures re: Orders).

Nothing in current LBR 9021-1.A, or any other local rule, requires the party lodging a proposed order to serve the order after it is entered. The committee members recall that before electronic case filing began, it was the court's practice to mail orders from chambers based on the information provided in accordance with LBR 9021-1.A.3. Since ECF began, the information required by LBR 9021-1.A.3 no longer serves any purpose. The committee members also recall that the court's use of the SRN began after ECF began.

III. POLICY UNDERLYING ORDER-SERVICE REQUIREMENT

Federal Rule of Bankruptcy Procedure 9022(a) requires that the clerk serve notice of the entry of an order or judgment "on the contesting parties and on other entities as the court directs" and on the United States trustee. That rule is an adaptation of Federal Rule of Civil Procedure 77(d), which requires the district court clerk to serve notice of the entry of an order or judgment on each party to a civil action who is not in default for failure to appear.

By requiring the clerk to serve notice of the entry of an order or judgment on entities other than the contesting parties, Rule 9022(a) authorizes the court to require service on entities other than the contesting parties.

An important, if not the only, purpose of serving main-case orders is the same as the purpose of serving orders or judgments in civil actions: to permit parties with standing to file posttrial motions (such as motions for new trial or for relief from an order under Federal Rules of Bankruptcy Procedure 9023 and 9024) or to appeal. The centrality of that purpose is apparent

from the final sentence of Rule 9022(a), which states, "Lack of notice of the entry does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 8002."

IV. COMMITTEE SUGGESTION

For the following reasons the committee suggests that the court not require by rule or otherwise that main-case orders be served on entities other than the contesting parties, notwithstanding the authorization in Rule 9022(a) for the court to do so:

- Only the contesting parties, i.e., the movant and parties who filed an objection or other response to the motion or notice, have either the practical interest in or legal standing to bring a posttrial motion or to appeal. Entities that do not file an objection or response to a motion or notice disclaim any interest in the granting or denial of the motion or notice.
- All ECF participants, including the UST, will automatically receive all main-case orders when they are entered. The number of non-ECF participants will dramatically decline with the implementation later this year of the requirement that essentially all lawyers practicing in bankruptcy court become ECF participants.
- The SRN and, to the extent the local rules require order service, the local rules are ambiguous regarding on whom orders must be served, other than the contesting parties. Because the SRN does not expressly require the recipient to serve an order on all entities on whom the motion or notice was served, in practice some attorneys serve orders only on the contesting

parties, but out of perhaps an excess of caution other attorneys serve orders on all entities on whom the motion or notice was served.

- Serving orders on non-ECF participants by mail burdens the estate or other party bearing the cost of copying and mailing the order and the recipient of the mailing and is environmentally irresponsible. Having disclaimed any interest in the resolution of the motion or notice, the recipient presumably will in most cases dispose of the mailed order. In a recent case in which two of the committee members are involved, the conservative approach to interpretation of the SRN resulted in mailing orders totaling 320 pages to each of 68 entities, none of whom had responded to the underlying motions (the three entities that objected to the motions were ECF participants), for a total cost of \$3,200. No purpose was served by those mailings.

V. CONCLUSION

The committee recommends that the SRN be revised to clarify that an order need be served only on the contesting parties. Under Rule 9022(a), the court would remain free to require additional notice in particular cases if warranted.

Although the committee has no policy objection to requiring the entity lodging an order to serve it only on the contesting parties, the committee questions whether Rule 9022(a)—which requires that orders be served by the clerk—authorizes the court to shift that responsibility to the lodging entity.

Thank you for the opportunity to make this suggestion. Please feel free to contact any committee member if you have any questions.

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