

Rule 2002-4

NEGATIVE NOTICE PROCEDURE

(a) ***Matters Authorized to Be Considered on Negative Notice.*** The Court has established a list (the “Negative Notice List”) of motions, objections, and other papers that may be considered by the Court without an actual hearing under the negative notice procedure described in this rule if no party in interest files a response to the relief requested. The Negative Notice List is posted on the Court’s website, www.flmb.uscourts.gov, and may be supplemented or otherwise amended by the Court from time to time. If permitted by the presiding judge, other motions, objections, and other matters may be considered by the Court using the negative notice procedure.

(b) ***Manner of Service.*** Motions, objections, and other papers filed pursuant to this negative notice procedure shall:

(1) Be served in the manner and on the parties as required by the applicable provisions of the Federal Rules of Bankruptcy Procedure, Local Rules, or Court order, and shall be filed with proof of such service in accordance with the provisions of Local Rule 9013-3; and

(2) Contain a negative notice legend prominently displayed on the face of the first page of the paper. The negative notice legend shall be in the following form:

NOTICE OF OPPORTUNITY TO
OBJECT AND REQUEST FOR HEARING

If you object to the relief requested in this paper you must file a response with the Clerk of Court at (address) [and, if the moving party is not represented by an attorney, mail a copy to the moving party at (address)] within (number) days from the date of the attached proof of service, plus an additional three days if this paper was served on any party by U.S. Mail.

If you file and serve a response within the time permitted, the Court will either notify you of a hearing date or the Court will consider the response and grant or deny the relief requested in this paper without a hearing. If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, and the Court may grant or deny the relief requested without further notice or hearing.

You should read these papers carefully and discuss them with your attorney if you have one. If the paper is an objection to your claim in this bankruptcy case, your claim may be reduced, modified, or eliminated if you do not timely file and serve a response.

(c) ***Time for Filing Responses.*** For the purpose of completing the negative notice legend, the number of days during which parties may respond that is placed in the negative notice legend shall be 21 days, except as set forth on the Negative Notice List, plus an additional three days for service if any party was served by U.S. Mail.

(d) ***Hearings.*** In the event a party in interest files a response within the time permitted in the negative notice legend, the Court may, but need not, schedule a hearing on the motion, objection, or other matter upon notice to the movant's attorney, the objecting party or parties, and others as may be appropriate.

(e) ***Consideration Without a Hearing.*** If no response is filed within the time permitted in the negative notice legend as computed under Fed. R. Bankr. P. 9006(a) and (f), the Court will consider the matter in chambers without further notice or hearing upon the submission by the movant of a proposed form of order granting the relief. The movant shall submit the proposed order after the expiration of the response period and within three business days of such expiration. If the movant fails to submit a proposed form of order within this time, the Court may enter an order denying, disapproving, or overruling the matter without prejudice for lack of prosecution. In addition to any other requirements, the proposed order shall recite that:

(1) The motion, objection, or other matter was served upon all interested parties with the Local Rule 2002-4 negative notice legend informing the parties of their opportunity to respond within 21 (or other) days of the date of service;

(2) No party filed a response within the time permitted; and

(3) The Court therefore considers the matter to be unopposed.

(f) ***Court May Schedule a Hearing Even if No Response is Filed.*** Nothing in this rule precludes the Court from conducting a hearing on the motion, objection, or other matter even if no response is filed within the time permitted in the negative notice legend.

Notes of Advisory Committee

2020 Amendment

This amendment revises the Negative Notice Legend to simplify the language and eliminate the requirement for service by mail on the moving party's attorney unless the moving party is not represented by an attorney. This amendment to the rule is effective August 1, 2020.

2019 Amendment

This amendment revises the language of the negative notice legend prescribed in section (b)(2) to be consistent with Official Form B 420B "Notice of Objection to Claim." This amendment to the rule is effective July 1, 2019.

2016 Amendment

This amendment revises the negative notice legend prescribed in section (b)(2) to be consistent with the December 1, 2016 amendment to Federal Rule of Bankruptcy Procedure 9006(f). The revision specifies that three days are added to the time for responding to a paper only if any party was served with the paper by U.S. Mail. This amendment to the rule is effective December 1, 2016.

2014 Amendment

The amendment revises the negative notice legend to add an additional three days for service to the response period. Revised section (e) provides that the movant shall submit a proposed order days after the expiration of the response period and within three business days of such expiration. This amendment to the rule is effective July 1, 2014.

2013 Amendment

This amendment refers parties to the Negative Notice List posted on the Court's website for a complete list of the motions, objections, and other matters that have been approved by the Court for consideration using negative notice procedures and for the applicable number of days in the objection period. This amendment to the rule is effective July 1, 2013.

2004 Amendment

This amendment corrects the Bankruptcy Rules citation to that of the currently used citation. Further, this amendment under section (b)(2) above allows Electronic Filing Users, i.e. those registered with the Court to file pleadings electronically, to take further advantage of using Negative Notice procedures within the electronic filing environment. Together with other Local Rule changes, these amendments are designed to assist attorneys in fulfilling the new electronic filing requirements. Former section (b)(2) is renumbered to (b)(3).

1997 Amendment

This amendment conforms the existing Local Rules to the uniform numbering system prescribed by the Judicial Conference of the United States and to the model system suggested and approved by the Advisory Committee on Bankruptcy Rules of the Judicial Conference's Committee on Rules of Practice and Procedure. In renumbering the Local Rules to conform to the uniform numbering system, no change in substance is intended. This amendment was effective on April 15, 1997.

This rule was formerly Local Rule 2.19A. The Advisory Committee Notes to the superseded rules may be helpful in interpreting and applying the current rules.

1995 Amendment

The rule codifies the negative notice procedure that has been in use, in varying degrees, in the Court for some time. As authorized by 11 U.S.C. § 102(1), orders required to be entered “after notice and a hearing,” or a similar phrase in the Bankruptcy Code or Federal Rules of Bankruptcy Procedure, may be entered without an actual hearing if appropriate notice is given and no party-in-interest requests a hearing. This rule is intended to give effect to this authorization in those kinds of matters that experience teaches frequently trigger no opposition. The Advisory Committee considers that this rule will substantially enhance the efficiency and economy of the practice in the Court.

Subparagraph (a)(6) contemplates that the list of motions authorized to be made under the negative notice procedure, as set forth in subparagraph (a)(1) through (a)(5), may be expanded if authorized by the presiding judge for matters heard by that judge.

Although the Advisory Committee foresees that the rule will normally be used in connection with motions, it is intended by the drafters that the rule would also apply if a judge authorizes its use in matters in which an objection rather than a motion initiates the matter. For example, if authorized by a judge for matters before that judge, it could apply to objections to proofs of claim under Fed. R. Bankr. P. 3007. In that case, the party filing an objection to claim would be the “movant” and the objection to claim would be the “motion” for purposes of interpreting and applying the rule.

The rule further contemplates that, when no objection to the motion is filed within the prescribed period, the Court will review the motion for procedural and substantive regularity upon the movant’s submission of a proposed form of order granting the motion. The Court may schedule a hearing on the motion if the Court, for any reason, determines that the circumstances make a hearing necessary or desirable.

These amendments to the rule were effective on February 15, 1995.