

UNITED STATES BANKRUPTCY COURT
Eastern District of California
501 I Street, Suite 3-200
Sacramento, CA 95814-7303

Chambers of
FREDRICK E. CLEMENT
Chief Bankruptcy Judge

916-930-4540

August 26, 2024

Re: Local Bankruptcy Rule 9010-1 (Proposed)
EDC Form 9010 (Proposed)
Local Bankruptcy Rule 9014-1(e)

An Open Letter to the Bar

On July 10, 2024, I wrote you about the first in a series of reforms designed to make the standardized Certificate of Service, EDC 7-005, simpler and more user-friendly. It is time for the second step.

Attorneys Who Are Not Users of the Court's Electronic-filing System

Federal Rule of Bankruptcy Procedure 9036 provides that Rule 5 notice is accomplished on "registered users" of the court's electronic-filing system simply by filing the document with the Clerk of the Court. In the Eastern District all attorneys and trustees are presumed to be users of the court's electronic-filing system. So, in theory, all attorneys who have appeared in a case or adversary proceeding receive notice of every document filed by any other party.

So, what is the problem? It has not been possible to know, with certainty, that all attorneys who have appeared in a case and/or adversary proceeding are, in fact, registered users of the electronic-filing system and, thus, have received notice. For example, our rules allow attorneys to be excepted from the electronic-filing system, LBR 5005-1(d)(2). Excepted attorneys do not receive e-notice. Second, an out-of-district attorney who has appeared in a case and/or adversary proceeding but is still in the process of becoming a registered user of the electronic-filing system would not receive e-notice. Third, an out-of-state attorney (not an e-filer) who retains in district counsel (a registered e-filer) to do the heavy lifting (including filing documents) but wishes to be noticed for all matters filed would not receive notice. Neither the court, nor the parties, have any way of knowing if these attorneys have been given notice.

LBR 9010-1

We have now solved this problem in two ways. First, our industrious Clerk of the Court, Wayne Blackwelder, has undertaken a comprehensive review of his records and has confirmed that attorneys appearing in the Eastern District of California who are not registered e-filers are rare. Second, to make certain that paper filers do receive notice, we have proposed new LBR 9010-1. The new rule requires any attorney appearing in a case and/or adversary proceeding and who is not a registered user of the filing system to file a "Notice of Appearance," Fed. R. Bankr. P. 9010(b), using EDC Form 9010. (Since almost all attorneys are registered users of the court's electronic filing system this rule will almost certainly not impact you.) When the attorneys file EDC Form 9010 they will automatically be included in the Clerk of the Court's Official U.S. Mails Matrix.

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Certificate of Service, EDC Form 7-005 Revised

Once LBR 9010 is adopted, Section 6B(1) (“Electronic Service on Registered Users of the Court’s Electronic Filing System”) of the Certificate of Service, EDC Form 7-005, will be removed. **Parties serving documents will not serve attorneys and/or trustees in the case and/or adversary proceeding, nor need to indicate that they have done so on the Certificate of Service.** See Fed. R. Civ. Proc. 5(d)(1)(B). Attachment 6B1 (“Clerk’s Electronic Service Matrix of Registered Users”) will likewise be removed as unnecessary. Why? Because the Clerk of the Court will give e-notice to all attorneys and trustees without further action by the parties.

As a part of this change, we are making applicable to all cases and adversary proceedings Federal Rule of Civil Procedure 5(d)(1)(B). See proposed LBR 9014-1(e). That rule provides that “[n]o certificate of service is required when a paper is served by filing it with the court’s electronic-filing system.” That means that if a motion, pleading, or other document is filed and needs to be served only on attorneys and/or trustee, the filing party need not file a certificate of service. Consider this example, a plaintiff that is represented by an attorney who files an adversary proceeding and serves the summons and complaint. The defendant files a Rule 12(b)(6) motion. Since only Rule 5 service of the motion is required and since the plaintiff’s attorney is a registered e-filer, the defendant/movant need not mail the motion to the plaintiff’s attorney, Fed. R. Bankr. P. 9036. In this circumstance, the movant need not file a certificate of service. Fed. R. Bank. P. 5(d)(1)(B), *incorporated by* LBR 9014-1(e).

Soliciting Your Comments

Neither proposed Rule 9010-1, nor EDC Form 9010, have yet been adopted. We, the collective bankruptcy bench, are interested in hearing from you about this proposal. Perhaps this rule is worthy of adoption; perhaps it is not. No later than September 25, 2024, please send your comments to me in writing. You may do so either (1) by letter addressed to Fredrick E. Clement, Chief Judge, United States Bankruptcy Court, 501 I Street, Suite 3-200, Sacramento, CA 95814; or (2) if you prefer, particularly for shorter comments, by sending an email to localrules@caeb.uscourts.gov. If you are comfortable, please do provide your name and telephone number; frequently, we have follow-up questions or comments that we would like to discuss with you. I will personally be sure that your comments are brought to the attention of each member of the bench and that your views are considered.

I look forward to hearing from you.

Sincerely,

A handwritten signature in blue ink, appearing to read "F. E. Clement", is written over a light blue horizontal line.

Fredrick E. Clement
Chief Judge, U.S. Bankruptcy Court