



Eighth Circuit Bankruptcy Monitor: Objection to IRS Proof of Claim

Objection to IRS Proof of Claim, Filed Before Amendment to Rule 3007 Went Into Effect, Was Properly Mailed Only to IRS

In [Nicolaus v. USA \(In re Nicolaus\)](#), the Eighth Circuit (Judges Stras, Benton and Gras) held that a debtor's objection to a proof of claim filed by the IRS may properly be served by mail to the IRS, rather than by service on the Attorney General and the local United States Attorney. The Eighth Circuit's holding is contrary to that of other courts, including the First Circuit BAP.

The IRS timely submitted a proof of claim in the amount of \$93,000 on account of the Debtor's alleged failure to pay withholding taxes owed by a business he ran with his brother. The Debtor filed an objection to the proof of claim and mailed a copy to the IRS at the address listed on the proof of claim. The IRS did not respond within the time allowed by local rules, so the bankruptcy court sustained the Debtor's objection to the proof of claim and disallowed the claim.

After the case was closed, the IRS moved for an order vacating the order disallowing its claim. The bankruptcy court granted that request, finding that the IRS was not properly served. The IRS contended that a claim objection commences a contested matter and that, under Rule 9014, "motions" in contested matters "not otherwise governed by these rules" must be served "in the manner provided for service of a summons and complaint by Rule 7004." Rule 7004, in turn, requires that to serve a federal agency, one must deliver the summons and complaint to the U.S. Attorney General and to the United States attorney for the district in which the action is brought.

The Debtor, on the other hand, pointed out that Rule 3007(a) (as it existed at the time the objection was filed^[1]) required that a claim objection be mailed or otherwise delivered “to the claimant.”

The Court held that Rule 9014 was inapplicable because it applies to “motions” in contested matters. The claim objection, the Court held, was not a “motion” at all. Further, Rule 9014 applies to contested matters “not otherwise governed by these rules,” but service of claim objections is governed by Rule 3007(a).

In so holding, the Court addressed the Advisory Committee’s comment to Rule 3007 that a “contested matter initiated by an objection to claim is governed by rule 9014.” The Court found that comment inapplicable, however, because a contested matter still can be governed by Rule 9014 even if service or delivery is accomplished in some other way. The Court further held that, to the extent the Advisory Committee comment could be read to require an objection to an IRS proof of claim to be served under Rule 7004, the comment would be contrary to the language of the actual Rules and therefore not entitled to weight.

Considering that Rule 3007 has since been amended to require an objection to an IRS proof of claim to be served as required under Rule 7004(b)(4) or (5), the primary holding of the case likely is of little importance to practitioners.

Perhaps more noteworthy is the Court’s discussion of its own jurisdiction. The IRS argued that, because service of the objection was defective, the bankruptcy court lacked personal jurisdiction over the IRS. The bankruptcy court agreed and vacated its disallowance order. The Eighth Circuit examined whether a final appealable order had been entered such that it had subject matter jurisdiction. The Court looked to the Supreme Court’s 2020 *Ritzen* decision, which held that an order in a bankruptcy case is “final” if it “definitively dispose[s] of [a] discrete dispute[] within the overarching bankruptcy case.” Here, the Eighth Circuit found that the contested matter commenced by the claim objection was a “discrete issue” and that it was definitively disposed of by the bankruptcy court’s determination that it lacked personal jurisdiction. This was the case even though there remained open disagreements regarding the tax penalties, because those disagreements “were beyond the scope of the bankruptcy case, and in particular, [the Debtor’s] objection to the proof of claim.” Thus, the Court was satisfied that the bankruptcy court’s order

vacating its disallowance order was a final order from which an appeal properly could be taken.

Practitioners in the Eighth Circuit therefore should be mindful that a determination by the bankruptcy court that it lacks personal jurisdiction is a final, appealable order.

[\[1\]](#) Rule 3007(a)(2)(A)(i) now specifies that an objection to a claim by the U.S. or its officers or agencies must be sent in the manner provided for under Rule 7004(b)(4) or (5). This change went into effect in 2017, after the Debtor filed his objection.

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