

MAR 29 2005

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT**

ORDERED PUBLISHED

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

In re:) BAP No. NV-04-1151-BSBu
)
 STATE LINE HOTEL, INC.,) BK-N-02-50085-GWZ
)
 Debtor.) Jointly Administered with:
) BK-N-02-50080-GWZ BK-N-02-50081-GWZ
) BK-N-02-50082-GWZ BK-N-02-50083-GWZ
) BK-N-02-50084-GWZ BK-N-02-50086-GWZ

SUZANNE F. JORGENSON,
)
)
 Appellant,
)

v.) **O P I N I O N**

STATE LINE HOTEL, INC.;
 UNSECURED CREDITORS'
 COMMITTEE,
)
)
 Appellees.
)

Argued by Video Conference and Submitted
on October 21, 2004 at Las Vegas, Nevada

Filed - March 29, 2005

Appeal from the United States Bankruptcy Court
for the District of Nevada

Honorable Gregg W. Zive, Chief Bankruptcy Judge, Presiding.

Before: BRANDT, SMITH and BUFFORD,¹ Bankruptcy Judges.

¹ Hon. Samuel L. Bufford, Bankruptcy Judge for the Central
District of California, sitting by designation.

1 BRANDT, Bankruptcy Judge:
2

3 Appellant Suzanne Jorgenson filed two (almost) identical personal
4 injury claims in the chapter 11² case of State Line Casino ("State
5 Line"), a general partnership.³ She listed an attorney's name and office
6 address in the space on each proof of claim form calling for the name
7 and address to which notice should be sent, and included her own
8 handwritten address beside her signature on the bottom of the form.
9 Debtor filed an objection to her claims, which it mailed to the
10 attorney's office. Jorgenson did not respond, and the bankruptcy court
11 sustained the objection, disallowing the claim.

12 Several months later, after learning that her claims had been
13 disallowed, Jorgenson moved to vacate the order disallowing the claim,
14 arguing that it was void for inadequate service. The bankruptcy court
15 denied the motion and Jorgenson timely appealed.

16 We AFFIRM.
17

18 I. FACTS

19 Jorgenson alleges that, on 12 December 2001, she was injured on
20 State Line's premises when an escalator caught her purse and pulled her
21 backwards, causing her to fall and strike her head. This occurred
22 approximately one month before debtor's chapter 11 petition. No debt to
23 Jorgenson was scheduled.
24

25 ² Absent contrary indication, all chapter and section
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 and all
27 "Rule" references are to the Federal Rules of Bankruptcy Procedure.
28 "FRCP" references are to the Federal Rules of Civil Procedure.

³ The cases of seven debtors, including State Line Casino, are
jointly administered; the State Line Hotel, Inc. case is the lead
case. For convenience, appellees are referred to in the singular.

1 Some time after the incident, Jorgenson retained attorney Marc
2 McLachlan in connection with her state law claims. She timely filed two
3 almost identical proofs of claim, each on Official Form B10, prescribed
4 by the Judicial Conference of the United States pursuant to Rule 9009,
5 and each asserted a general unsecured claim in the amount of \$1,000,000.
6 Appearing in the box for "Name & address where notices should be sent"
7 of each form is:

8 Mark C. McLachlan, Esq.
9 480 E. 400 S., Suite 200
10 S.L.C., UT 84111
11 (801) 521-0123

12 Jorgenson signed in the signature box at the bottom of each form;
13 handwritten after her signature is "@ 426 N. 150 E., Lindon, Utah
14 84042." No documentation was attached in support of either claim, nor
15 is any proof of service of either claim in the record provided to us.⁴

16 The parties do not dispute that, other than the proofs of claim,
17 debtor received no other communication from Jorgenson or from counsel;
18 McLachlan never requested to be added to the special notice list
19 pursuant to Rule 2002(i), nor filed a notice of appearance, nor
20 participated in the bankruptcy case. No personal injury action was
21 filed before the proceedings in question.

22 In its Fourth Set of Objections to Claims (the "Objection"), debtor
23 objected to both of Jorgenson's claims and several others. The
24 Objection provided in part:

25 Claim Nos. 208 and 215 filed by Suzanne Jorgenson (the
26 "Jorgenson Claims") . . . assert identical unsecured
27 nonpriority claims based on personal injury/wrongful death in
28 the amount of \$1 Million. Each of the Jorgenson Claims attach
insufficient proof of any monies owed by the Debtors as
neither attaches any supporting documentation at all. After
a thorough review of the Debtors' books and records, the
Debtors have determined that they have no records reflecting
any basis for either of the Jorgenson Claims. Accordingly,

⁴ We will refer to Jorgenson's claims in the singular.

1 the Debtors request that the Court disallow Claims Nos. 208
2 and 215 in their entirety.

3 The proof of service indicates that debtor mailed the Objection to
4 Jorgenson care of McLachlan's law office in Salt Lake City.

5 Jorgenson filed no response to the Objection, and on 29 April 2003,
6 the bankruptcy court entered an order sustaining the Objection,
7 disallowing both claims:

8 The Debtors' objections to Claims No. 208 and 215,
9 general unsecured claims in the amount of \$1 million each
10 asserted by Suzanne Jorgenson against State Line Casino, are
11 sustained. Claims No. 208 and 215 are hereby disallowed in
12 their entirety.

13 McLachlan apparently first learned that Jorgenson's claims had been
14 disallowed on 20 October 2003, on being served notice of debtor's motion
15 to dismiss the case. An exhibit to the motion valued Jorgenson's claim
16 at "\$0.00."

17 Shortly thereafter, Jorgenson (with new counsel) moved to vacate
18 the order disallowing the claims, arguing that the order is void. In
19 McLachlan's affidavit, the only evidence in support, he stated:

20 1. I am an attorney for claimant Suzanne F. Jorgenson and
21 represent her with regard to injuries sustained from a fall on
22 an escalator located in the Stateline Hotel on or about
23 December 12, 2001. I am an attorney licensed to practice in
24 the State of Utah.

25 2. In connection with this claim, I caused to be filed a
26 Proof of Claim, which was received and filed in this honorable
27 court on April 11, 2002.

28 3. In December 2003, I learned that on February 24, 2003,
the debtor, Stateline Casino, formally objected to Mrs.
Jorgenson's Proof of Claim. The certificate of service shows
that a copy of this Objection was supposedly mailed to me at
my business address, printed above. I have since had the
opportunity to review this pleading and herein state that
prior to December 2003, I have never received a copy of this
Objection. I have reviewed my files and have likewise been
unable to locate the copy that was purportedly sent to my
attention.

4. Further I never received a copy of any Order that was
apparently entered by the Court on April 29, 2003, sustaining
the Debtor's subject objection. I have not located a copy of

1 this Order after having conducted a diligent search of my
2 files.

3 5. Having litigated personal injury matters in the State of
4 Utah for 30 years, I value this claim as being worth in the
5 range of \$500,000 to \$1,000,000.

6 Debtor responded, arguing that Jorgenson had appointed McLachlan as
7 her counsel of record, and that McLachlan's bare affidavit is
8 insufficient to rebut the mailbox presumption because the Objection had
9 never been returned as undeliverable. Debtor did not contend that it
10 had served Jorgenson herself at any address. Debtor also argued that
11 relief should be denied for equitable reasons, as the estate had later
12 entered into a settlement agreement with creditors and would be
13 irreparably prejudiced by Jorgenson's delay. Finally, it argued that
14 Jorgenson's claim was not meritorious and lacked supporting
15 documentation.

16 After hearing, the bankruptcy court denied the motion, finding:

17 Even if I had to reach the agency theory, which I don't think
18 I do, the proof of claim indicates who Ms. Jorgenson wanted
19 served;

20 And it has the lawyer's name, it has her name care of the
21 lawyer's address. That's it[.]

22 . . .

23 This is an objection to a claim;

24 And I do find that it is analogous to a civil action or
25 an adversary proceeding;

26 The proof of claim sometimes can substitute as a
27 complaint;

28 And we do that sometimes pursuant to local rule or even
Federal Rule of Bankruptcy Procedure 3007, where the parties
don't want to go through the expense . . . of an adversary
about the claim. They allow the claim to stand as here it is.
And then the objection is like the answer;

And . . . some of the cases that made that analogy. And
I think that's a good analogy. . . .

Transcript, 2 March 2004, at 8:24 - 10:5.

Interpreting Rule 7004(b), the bankruptcy court further observed:

1 And if you're trying to tell me that you can appoint somebody
2 to accept notice and that doesn't vest that person with the
authority to accept service, frankly, I can't accept that.

3 Id. at 27:24 - 28:2.

4 Jorgenson timely appealed.

5 A sale of substantially all debtor's assets closed in December
6 2002, and debtor moved for approval of a compromise and settlement with
7 other creditors. Under the terms of the approved settlement, \$90,000
8 was reserved for payment in full of all allowed unsecured creditors'
9 claims. On 14 October 2003 the bankruptcy court granted debtor's
10 motion. Later, based on the underlying settlement, debtor moved to
11 dismiss certain debtors, including State Line Casino, which triggered
12 the proceedings resulting in the order on review.

13 Since this appeal was taken, the order approving the settlement was
14 appealed to this panel; we reversed and remanded. In re State Line
15 Hotel, Inc., BAP No. NV-03-1523-MoHMa (9th Cir. BAP June 9, 2004).
16 Review of the docket reflects that a plan has been confirmed and
17 debtor's motion for final decree is now pending.

18 Since taking her appeal, Jorgenson moved for relief from stay to
19 allow her to prosecute her personal injury claim in state court. The
20 bankruptcy court granted her motion, limiting any recovery to insurance
21 proceeds.

22 23 **II. JURISDICTION**

24 The bankruptcy court had jurisdiction via 28 U.S.C. § 1334 and
25 § 157(b)(1) and (2)(B), and we do under 28 U.S.C. § 158(c).

26 27 **III. ISSUES**

28 A. Was notice of the Objection properly given?

1 B. Did that notice satisfy due process?

2 C. Was the motion to vacate the order denying Jorgenson's claim
3 properly denied?

4
5 **IV. STANDARDS OF REVIEW**

6 A. If service is defective, the judgment is void, and we review
7 de novo "[w]hether a default judgment was void because the court lacked
8 personal jurisdiction" over a defendant in an adversary proceeding. In
9 re Cossio, 163 B.R. 150, 154 (9th Cir. BAP 1994), aff'd, 56 F.3d 70 (9th
10 Cir. 1995) (table). We review factual findings respecting service for
11 clear error. Id.

12 B. Whether a particular procedure comports with basic
13 requirements of due process is a question of law which we review de
14 novo. In re Garner, 246 B.R. 617, 619 (9th Cir. BAP 2000).

15 C. We review the denial of a motion under FRCP 60(b), applicable
16 via Rule 9024, for abuse of discretion. In re Van Meter, 175 B.R. 64,
17 67 (9th Cir. BAP 1994); In re Hammer, 940 F.2d 524, 525 (9th Cir. 1991).
18 Under the abuse of discretion standard, we must have a definite and firm
19 conviction that the bankruptcy court committed a clear error of judgment
20 in the conclusion that it reached before reversal is proper. In re
21 Black, 222 B.R. 896, 899 (9th Cir. BAP 1998).

22 Further:

23 A trial court will necessarily abuse its discretion by
24 failing to set aside a void judgment. Although the language
25 of Rule 60(b)(4) appears to allow the court discretion, there
26 is no discretion to refuse vacating a judgment if it is void.
27 When it is found that there has been defective service of
28 process, the judgment is void: A person is not bound by a
judgment in litigation to which he or she has not been made a
party by service of process. The factual circumstances
surrounding service of process are reviewed under the clearly
erroneous standard of Fed. R. Bankr. P. 8013. Whether the
default judgment was void because the court lacked personal

1 jurisdiction over [claimant] under the circumstances is
2 reviewed de novo.

3 Cossio, 163 B.R. at 154 (citations and internal quotations omitted).

4 And we may affirm on any basis fairly supported by the record. In
5 re Fraschilla, 235 B.R. 449, 459 (9th Cir. BAP 1999), aff'd, 242 F.3d
6 381 (9th Cir. 2000) (table).

8 V. DISCUSSION

9 Jorgenson conceded at argument that she could not rebut the mailbox
10 presumption;⁵ accordingly, our analysis is predicated on the factual
11 premise that McLachlan received the Objection. Further, as noted in the
12 dissent, she waived any argument regarding the form of the Objection; we
13 do not address that possible issue.

14 Jorgenson's motion to vacate invoked FRCP 60(b)(4), applicable in
15 bankruptcy proceedings via Rule 9024. It provides:

16 On motion and upon such terms as are just, the court may
17 relieve a party or a party's legal representative from a final
18 judgment, order or proceeding for the following reasons: . . .

18 (4) the judgment is void;

19 Jorgenson argues that she was not represented, and had to be served
20 as an individual "at her dwelling house or where she regularly conducts
21 business." Opening Brief, at 3. Rule 3008 and § 502(j) provide express
22
23

24 ⁵ The mailbox presumption is that mail properly addressed,
25 stamped, and deposited in an appropriate receptacle creates a
26 rebuttable presumption of its receipt, and service by mail is complete
upon mailing. See Rule 7005; FRCP 5(b).

27 A presumption of receipt is established by showing of proper
mailing. Lewis v. U.S., 144 F.3d 1220, 1222 (9th Cir. 1998); In re De
28 la Cruz, 176 B.R. 19, 22 (9th Cir. BAP 1994). Mere denial of receipt
is insufficient to rebut the presumption; clear and convincing
evidence is required. In re Bucknum, 951 F.2d 204, 206-07 (9th Cir.
1991).

1 authority to seek reconsideration of a disallowed claim for cause, but
2 were not raised, and we do not address them.

3 Generally, a trial court may deny a motion to vacate a default
4 judgment if the plaintiff (here, State Line) would be prejudiced should
5 the judgment be set aside, and if the defendant (here, Jorgenson, the
6 claimant) has no meritorious defense (here, her claim), or if her
7 culpable conduct led to the default. Hammer, 940 F.2d at 525-526.

8 The bankruptcy court opined that there was not a shred of evidence
9 that Jorgenson's claim was meritorious:

10 . . . nobody has ever bothered to submit to me, the form of an
11 affidavit or declaration, medical records, bills, lost wages.
I don't even know her age;

12 . . .

13 If I'm going to set aside a final order I should be aware
14 that there's a meritorious defense. And I'm not satisfied in
15 that regard. And more than adequate opportunity has been
provided to do that. . . .

16 Transcript, 2 March 2004, at 39:15-18 and 40:7-10.

17 But, as noted by Professor Moore, the showing of a meritorious
18 claim is not necessary for relief from a void judgment:

19 Indeed, the United States Supreme Court has stated that when
20 a judgment is void because of a lack of proper service on the
21 defendant, it is a denial of due process to require a showing
22 of a meritorious defense as a precondition to relief from that
23 void judgment. The case in which the United States Supreme
24 Court made its statement involved procedures for relief from
default judgments that applied in the state courts of Texas,
but there is no question that the Court's constitutional
holding also applies to Rule 60(b)(4) motions in federal
court.

25 James Wm. Moore et al., 12 Moore's Federal Practice, ¶ 60.44[5][b] (3d
26 ed. 2004) (citing Peralta v. Heights Med. Ctr., Inc., 485 U.S. 80, 84-86
27 (1988)). See also 11 Charles A. Wright & Arthur R. Miller, Federal
28 Practice & Procedure, Civ. 2d § 2862 (1995).

1 We need not reach this question if the order is void for
2 insufficient service or lack of due process, see Cossio, 163 B.R. at
3 154, which we now address:

4
5 A. Was notice of the Objection properly given?

6 Rule 3007, which governs the procedure for objections to claims,
7 provides:

8 An objection to the allowance of a claim shall be in
9 writing and filed. A copy of the objection with notice of
10 hearing thereon shall be mailed or otherwise delivered to the
11 claimant, the debtor or debtor in possession and the trustee
at least 30 days prior to the hearing. If an objection to a
claim is joined with a demand for relief of a kind specified
in Rule 7001, it becomes an adversary proceeding.

12 (emphasis added).

13 Is putting an attorney's name and address in the box for
14 designation of the notice recipient and notice address on the proof of
15 claim form, without more, an appointment for service of an objection
16 to that claim? State Line argues that it is authorization for service
17 under Rule 7004(b)(8), which provides:

18 . . . it is also sufficient if a copy of the summons and
19 complaint is mailed to an agent of such defendant authorized
by appointment or by law to receive service of process . . .

20
21 Service of process and notice are distinct under the bankruptcy
22 rules, as observed in In re Association of Volleyball Professionals, 256
23 B.R. 313, 320 (Bankr. C.D. Cal. 2000):

24 In contrast [to notice under Rule 2002(g)], when a
25 bankruptcy proceeding, such as an objection to a proof of
26 claim . . . , directly affects the individual rights of a
specific party, the initiating motion or objection must be
served on the affected party in the same manner as a summons
and complaint are served pursuant to Rule 7004.

27 (citation omitted). The bankruptcy court there required service of a
28 claim objection on a non-responding presumed corporation by publication.

1 Debtor argues Jorgenson initiated the contested matter by filing
2 the proof of claim, so the Objection is akin to an answer, which may
3 properly be served on counsel, citing FRCP 5, applicable via Rule 7005,
4 and In re Lomas Financial Corp., 212 B.R. 46, 55 (Bankr. D. Del. 1997).

5 We disagree, as a claim is deemed allowed if not objected to.
6 § 502(a). Rather, it is the objection which initiates a contested
7 matter, governed by Rule 9014. See In re Levoy, 182 B.R. 827, 834 (9th
8 Cir. BAP 1995); and Garner, 246 B.R. at 623. Rule 9014 provides:

9 (a) Motion. In a contested matter not otherwise governed by
10 these rules, relief shall be requested by motion, and
11 reasonable notice and opportunity for hearing shall be
12 afforded the party against whom relief is sought. . . .

13 (b) Service. The motion shall be served in the manner
14 provided for service of a summons and complaint by Rule 7004.
15 Any paper served after the motion shall be served in the
16 manner provided by [FRCP 5(b)].

17 (emphasis added).

18 A number of other courts have concluded that an objection to a
19 proof of claim is properly served on a corporation (under Rule
20 7004(b)(3)) if served on the person named on the proof of claim at the
21 address given for notice. In re Ms. Interpret, 222 B.R. 409, 415
22 (Bankr. S.D.N.Y. 1998); In re Rushton, 285 B.R. 76, 81 (Bankr. S.D.Ga.
23 2002) (following Ms. Interpret); In re Village Craftsman, Inc., 160 B.R.
24 740, 745 (Bankr. D.N.J. 1993). In Ms. Interpret, the proof of claim
25 specified that notice should be sent to claimant "c/o" a particular law
26 firm, and the court held that that was sufficient to designate the law
27 firm as agent for service of process:

28 [I]t is evident that a party may not sign a proof of claim and
then assert that it did not want notices sent to the address
contained within the proof of claim. Who better than the
creditor know what address it wishes used? Had [the creditor]
desired some other address for service of process in the case,
it had only to insert it into the proof of claim.
Accordingly, I hold that [the creditor] expressly authorized
[law firm] as its agent for service of process in the
bankruptcy case.

1 222 B.R. at 415 (citations omitted). The parties have not cited, nor
2 have we found, any authority from within this Circuit apart from In re
3 Association of Volleyball Professionals, 256 B.R. 313 (Bankr. C.D. Cal.
4 2000) which follows these cases, nor any so holding on an individual's
5 claim.

6 Elaborating, the Ms. Interpret court also found implied authority,
7 in the alternative:

8 But even if I err in this conclusion [that in the name and
9 address box on the proof of claim was the appointment of an
10 agent], the record plainly establishes that [the law firm] was
11 implicitly appointed as [creditor's] agent for service of
12 process.

11

12 If the purported agent's activities in the forum are
13 substantial and involve the significant exercise of
14 independent judgment and discretion, service on the agent is
15 valid even in the absence of express authorization to accept
16 process.

15 Id. at 415-16 (citations omitted). And the Ninth Circuit recently
16 decided In re Focus Media, Inc., 387 F.3d 1077, 1079 (9th Cir. 2004)
17 cert. denied., _____ S. Ct. _____, 2005 WL 275275 (March 21, 2005):

18 [I]n an adversary proceeding in bankruptcy court, a lawyer can
19 be deemed to be the client's implied agent to receive service
20 of process [under Rule 7004(b) (8)] when the lawyer repeatedly
21 represented that client in the underlying bankruptcy case, and
22 where the totality of the circumstances demonstrates the
23 intent of the client to convey such authority.

22 There, the defendant's attorney had been "extensively involved in the
23 underlying bankruptcy proceeding and on several occasions participated
24 on [the defendant's] behalf." Id. at 1084.

25 Implied agency is not seriously argued in the case before us, as
26 there were no "substantial activities or significant exercise of
27 independent judgment and discretion" to support an implied agency
28 theory. At most, McLachlan's office prepared and filed two proofs of

1 claim. McLachlan neither negotiated for Jorgenson, nor communicated
2 with the court or counsel on her behalf, nor filed anything which
3 identifies Jorgenson as his client.

4 But we need not go so far to decide this appeal. The cases finding
5 either an express or an implied appointment of the counsel named in the
6 appropriate box on the claim form as an agent for service of process are
7 predicated on an implicit assumption that Rule 7004 service is required.
8 We disagree: Rule 9014(b) requires service of any motion required by
9 Rule 9014(a) to meet Rule 7004's requirements, and Rule 9014(a) applies
10 only to contested matters "not otherwise governed by these rules." As
11 noted in In re Hejl, 85 B.R. 399, 400 (Bankr. W.D. Tex. 1988), a claim
12 objection is otherwise governed: Rule 3007 calls for its initiation by
13 mailing (or otherwise delivering) a copy of the objection with a notice
14 of hearing to the claimant. See also In re Metro Transp. Co., 117 B.R.
15 143, 146 (Bankr. E.D. Penn. 1990) (holding that since a motion to
16 determine claim priority is "otherwise governed" by Rules 3007 and
17 7001(2), Rule 9014 is inapplicable).

18 Contra the dissent, we do not think Rule 9014 nevertheless required
19 the Objection to be served in accordance with Rule 7004. Subparagraph
20 (b) of that rule, rigorously parsed, only pertains to "[t]he motion,"
21 unambiguously referring back to subparagraph (a). This was even clearer
22 before the 2002 revision broke the unitary Rule 9014 into subparagraphs,
23 without changing the wording of what is now (a) and (b), insofar as it
24 pertains to this appeal (that is, the language respecting service of any
25 required motion). Advisory Comm. Note (2002).

26 If a motion is not required under subparagraph (a) because the
27 contested matter is "otherwise governed by these rules," and the other
28 provision does not require a motion, as with respect to claims

1 objections, Rule 9014(b) does not require Rule 7004 service. Rule
2 9014(b) does not mention objections.

3 Official Form B10, promulgated by the same authority as the Rules,
4 and used here, calls for the claimant to specify to whom and where that
5 notice should go. Jorgenson specified McLachlan at his office address.
6 Although attorneys and agents often sign proofs of claim, Jorgenson
7 signed the forms herself. The record does not disclose why she also
8 wrote in her address, but that is of no moment. She had, a few inches
9 above, expressly directed that notice be sent to her attorney, and the
10 mailing of notice is all Rule 3007 requires. It follows that mailing
11 the Objection as she directed was sufficient under the Rules, and the
12 resulting order was not void.

13 Parenthetically, this outcome is consistent with Focus Media,
14 wherein the Ninth Circuit noted:

15 The critical inquiry in evaluating an attorney's authority to
16 receive process is, of course, whether the client acted in a
17 manner that expressly or impliedly indicated the grant of such
18 authority.

18 Focus Media, 387 F.3d at 1083, quoting Olympus Corp. v. Dealer Sales &
19 Serv., Inc., 107 F.R.D. 300, 305 (E.D.N.Y. 1985) (emphasis added).

20 Further, after finding that the attorney had appeared extensively
21 on the client's behalf in the underlying bankruptcy case, the court
22 noted that an agent's authority to act cannot be determined solely on
23 the agent's actions but, rather, "authority must be established by an
24 act of the principal." In this regard, the court found "most important"
25 the fact that the client's own declaration "manifests the requisite
26 evidence of authority conveyed by the principal." Id. at 1084.
27 Although the pertinent rule here allows for mailed notice, rather than
28 requiring service of process, Jorgenson explicitly directed where and to

1 whom it should go, in contrast to impliedly authorizing her lawyer to
2 accept it.

3 Although we reach a result contrary to Volleyball Professionals and
4 we differ from the bankruptcy courts in the other claims objection cases
5 discussed above, none of those courts (apart from Hejl) were,
6 apparently, presented with an argument from the structure of Rules 3007
7 and 9014, on which our conclusion rests. Nor were we, but we are not
8 confined to the arguments of the parties on legal issues, In re Pizza of
9 Hawaii, 761 F.2d 1374, 1377 (9th Cir. 1985), and may affirm on any basis
10 supported by the record. Fraschilla, 235 B.R. at 459.

11 Nor does Levoy require otherwise: our opinion there reasons from
12 the unexamined premise that Rule 7004 service is required. The
13 implications of "not otherwise governed" in Rule 9014(a) (then Rule
14 9014) are not considered; the Rule is not quoted. In fairness, it
15 appears the question was not raised. But we are not constrained by
16 stare decisis from now examining the premise:

17 Of course, not every statement of law in every opinion is
18 binding on later panels. Where it is clear that a statement
19 is made casually and without analysis, where the statement is
20 uttered in passing without due consideration of the
21 alternatives, or where it is merely a prelude to another legal
22 issue that commands the panel's full attention, it may be
23 appropriate to re-visit the issue in a later case. However,
24 any such reconsideration should be done cautiously and rarely-
25 only where the later panel is convinced that the earlier panel
did not make a deliberate decision to adopt the rule of law it
announced. Where, on the other hand, it is clear that a
majority of the panel has focused on the legal issue presented
by the case before it and made a deliberate decision to
resolve the issue, that ruling becomes the law of the circuit
and can only be overturned by an en banc court or by the
Supreme Court.

26 U.S. v. Johnson, 256 F.3d 895, 915-916 (9th Cir. 2001) (Kozinski, J.)
27 (footnote omitted). See, to the same effect, Miranda B. v. Kitzhaber,
28 328 F.3d 1181, 1186 (9th Cir. 2003).

1 Levoy holds, 182 B.R. at 834, that Rule 9014 applies to objections
2 to claims. We do not disagree with that statement, but, as set out
3 above, conclude that Rule 9014 defers to Rule 3007 on the subject of
4 claims objections: it calls for an objection, not a motion, and
5 authorizes notice, rather than requiring service. It is Levoy's next
6 offhand statement which comes within the principle explicated in the
7 quote from Johnson: that claims objections must be served as Rule 7004
8 provides. It is almost an assumption, not entitled to precedential
9 weight, Sorenson v. Mink, 239 F.3d 1140, 1149 (9th Cir. 2001); there is
10 no discussion of the notice language of Rule 3007, which is not quoted,
11 nor any supporting analysis respecting notice or service. We do not see
12 a focus on the notice/service question, nor a deliberate decision to
13 resolve the issue, in dramatic contrast to the treatment given to Rule
14 7004's requirements, obviously the main focus of the Levoy panel's
15 energies. We take no issue with Levoy's analysis of Rule 7004, just to
16 its applicability here.

17
18 B. Due Process

19 Although Jorgenson argued failure to comply with the Rules, rather
20 than denial of due process, we observe that it requires that notice be
21 "reasonably calculated, under all the circumstances, to apprise
22 interested parties of the pendency of the action and afford them an
23 opportunity to present their objections." Mullane v. Central Hanover
24 Bank & Trust Co., 339 U.S. 306, 314 (1950). And "[i]f the notice
25 requirement of the due process clause is not satisfied, the order is
26 void." In re Ex-Cel Concrete Co., 178 B.R. 198, 203 (9th Cir. BAP
27 1995); likewise, In re Loloe, 241 B.R. 655, 661 (9th Cir. BAP 1999) and
28 In re Villar, 317 B.R. 88, 94 (9th Cir. BAP 2004).

1 We do not see how notice given as Jorgenson specified fails these
2 requirements.

3
4 C. Meritorious defense?

5 Because the Objection was properly served and there was no
6 violation of due process, the normal requirements for setting aside a
7 judgment (to which, by operation of Rule 9014, the order sustaining it
8 was analogous) govern. As we noted at the beginning of our analysis, a
9 court may properly decline to vacate when no meritorious defense (here,
10 claim) is shown. The bankruptcy court found that was the case here.
11 Jorgenson has not challenged that finding, and we see nothing in the
12 record indicating she made any showing whatsoever respecting the merits
13 of her claim. Accordingly, the Objection was properly sustained, and
14 the motion to vacate properly denied.

15
16 **VI. CONCLUSION**

17 Bankruptcy estates receive hundreds of claims, as here, and
18 thousands or hundreds of thousands in very large cases, from across the
19 nation and beyond. The result here is neither harsh nor unfair: the
20 designation of a recipient for notice is uniquely in the claimant's
21 control, and debtors, trustees, and other creditors cannot reasonably be
22 required to expend the effort and incur the expense of finding claimants
23 who may be out of state or anywhere in the world. Following the
24 claimant's explicit direction on the claim form comports with the Rules
25 and due process, promotes economy (in most instances, other creditors
26 bear the expense of claims objections), and efficiency for parties and
27 courts alike.

1 The serendipitous inclusion of Jorgenson's address on her claim
2 form does not support a contrary ruling – neither debtor nor anyone else
3 should have to second-guess her express designation.

4 As State Line noticed Jorgenson of its Objection to her claim as
5 she had directed, its service complied with the Rules and satisfied due
6 process. And as she has not shown a meritorious basis for her claim,
7 the bankruptcy court properly denied her motion to vacate the order
8 disallowing it. AFFIRMED.

9
10
11 BUFFORD, Bankruptcy Judge, dissenting.

12
13 I disagree with the majority's view that State Line properly served
14 its objection on Ms. Jorgenson in this case. I concur with Parts I-IV,
15 and approximately the first half of Part V. I disagree with the
16 majority's views expressed in the last four paragraphs of subpart A of
17 part V, and with subparts B and C.

18
19 **I. Statutory Framework - § 502**

20
21 Analysis of the law governing an objection to claim begins with
22 § 502, which provides in relevant part:

- 23 (a) A claim . . . proof of which is filed under
24 section 501 of this title, is deemed allowed, unless
25 a party in interest . . . objects.
26 (b) . . . [I]f such objection to a claim is made, the
27 court, after notice and a hearing, shall determine
28 the amount of such claim

1 It is uncontested that, as debtor in possession, State Line is a
2 qualified party in interest, and that it filed an objection to Ms.
3 Jorgenson's claim.

4 5 **II. Applicable Bankruptcy Rules**

6
7 Three bankruptcy rules, adopted pursuant to the foregoing statute
8 (inter alia) are at issue in this litigation: Rules 3007, 7004 and 9014.

9 10 **A. Rule 9014**

11
12 It is common ground that the filing of a claim objection commences
13 a contested matter, and that Rule 9014 applies to claim objections.
14 Rule 9014 provides in relevant part:

15 (a) **Motion.** In a contested matter not otherwise governed
16 by these rules, relief shall be requested by motion, and
17 reasonable notice and opportunity for hearing shall be
18 afforded the party against whom relief is sought. . . .

(b) **Service.** The motion shall be served in the manner
provided for service of a summons and complaint by Rule
7004.

19 Rule 9014 goes on to provide that a number of specified rules for
20 adversary proceedings (the rules in Part VII of the Federal Rules of
21 Bankruptcy Procedure) apply to contested matters (except as the court
22 may otherwise order), and to provide for the attendance and testimony of
23 witnesses.

24 Rule 9014(a) provides that it is not applicable if the contested
25 matter is "otherwise governed by these rules" The majority
26 holds (correctly, in my opinion) that objections to claims are
27 "otherwise governed" by the Federal Rules of Bankruptcy Procedure, and
28

1 specifically by Rule 3007. However, I differ with the majority on the
2 extent to which objections to claims are so "otherwise governed."

3 Rule 9014(a), as I read it, provides the applicable rule for two
4 subjects arising in contested matters: the form that the request for
5 relief must take (a motion), and the nature of notice to the opponent
6 ("reasonable notice and opportunity for hearing"). These are the
7 matters that, in my view, are "otherwise governed" by Rule 3007. Thus,
8 for a claim objection, the form of a claim objection and the nature of
9 notice to the opponent are governed by Rule 3007.

11 **B. Rule 3007**

13 Rule 3007 provides in relevant part:

14 An objection to the allowance of a claim shall be in writing
15 and filed. A copy of the objection with notice of the hearing
16 thereon shall be mailed or otherwise delivered to the claimant
. . . at least 30 days prior to the hearing.

17 This rule provides that the proper pleading is an objection rather than
18 a motion. My disagreement with the majority concerns whether this rule
19 also provides how a claim objection should be served.

21 **C. Relationship between Rules 9014 and 3007**

22
23 The majority and I part company on the applicability of Rule
24 9014(b) to claims objections. The "not otherwise governed" language is
25 contained only in subpart (a). It is not contained in subpart (b), and
26 there is no grammatical construction that makes it clearly apply to
27 subpart (b). Furthermore, in my view, the "otherwise governed" language
28 does not apply to the remaining subparts of Rule 9014.

1 **1. Levoy**

2
3 This panel does not write on a blank slate on the subject of the
4 relationship between Rule 9014 and Rule 3007. In my view, this issue is
5 governed by United States v. Levoy (In re Levoy), 182 B.R. 827 (9th Cir.
6 BAP 1995), where the IRS contended that service of a claim objection
7 must satisfy the requirements of Rule 7004, while the debtor contended
8 that she was not required to satisfy the formalities of that rule. In
9 holding in favor of the IRS, we stated:

10 The parties disagree as to the type of notice
11 required under Rule 3007. The United States argued that
12 Fed.R.Bankr.P. 7004 applies, while Debtors argued that . . .
13 the United States was not required to be served with a summons
or other pleading. We do not find merit in Debtors' argument
and agree that the position of the United States expresses the
correct, majority viewpoint on this issue.

14 Fed.R.Bankr.P. 3007 does not provide the manner for
15 service of the objection to a proof of claim. However, the
16 rule's Advisory Committee Note states: "The contested matter
initiated by an objection to a claim is governed by rule 9014
17" Fed.R.Bankr.P. 9014, which pertains to contested
18 matters, in turn, makes applicable the service provisions of
Fed.R.Bankr. 7004. . . .

19 Thus, we hold that Fed.R.Bankr.P. 9014 applies to
20 objections to claims.

21 Id. at 833-34. Having found that Rule 7004 must be satisfied for the
22 service of a claim objection, we found in Levoy that the debtor had met
23 the rule's requirements in its service on the United States on behalf of
24 the IRS.⁶

25 In my view, we are bound by Levoy's holding. See, e.g., Fjelsted
26 v. Lien (In re Fjelsted), 293 B.R. 12, 15 (9th Cir. BAP 2003) (holding
27 that the Bankruptcy Appellate Panel is bound by its previous decisions).

28 The majority does not distinguish the holding in Levoy. Instead,
it takes the position that this ruling in Levoy does not constitute
binding precedent. In support of this view, the majority erroneously

⁶ I note that I was the bankruptcy judge in the Levoy case,
and this panel's decision reversed my ruling on this issue.

1 relies on United States v. Johnson, 256 F.3d 895, 915-16 (9th Cir.
2 2001), for authority on what constitutes binding precedent. This
3 reliance is unjustified because the paragraph quoted by the majority as
4 the rule on binding precedent comes from the dissent by Judge Kozinski,
5 which is joined by only three other members of the eleven-judge en banc
6 panel.⁷ The majority in that case did not reach the issue of what
7 constitutes binding precedent. The language on which the majority here
8 relies is thus a dissenting view, which has never been adopted either by
9 the Ninth Circuit or this panel.

10 The actual Ninth Circuit law on what constitutes binding precedent
11 is the following:

12 where a panel confronts an issue germane to the eventual
13 resolution of the case, and resolves it after reasoned
14 consideration in a published opinion, that ruling becomes the
law of the circuit, regardless of whether doing so is
necessary in some strict logical sense.

15 Miranda B. v. Kitzhaber, 328 F.3d 1181, 1186 (9th Cir. 2003).

16 Under the Miranda B. standard, Levoy must control this issue of
17 proper service of a claim objection. The panel in Levoy confronted the
18 issue of whether Rule 3007 or Rule 7004 (by way of Rule 9014) governs
19 the service of a claim objection, devoted five paragraphs to its
20 analysis, and resolved the issue after reasoned consideration. This
21 clearly satisfies the Miranda B. standard, and makes Levoy binding
22 precedent on this issue. The majority cannot evade this holding by
23 casting aspersions on the reasoning in the decision. This is precisely
24 what binding precedent prohibits.

25
26
27 ⁷ It is necessary to read the Johnson opinions carefully to
28 determine what constitutes a majority holding. Its decision consists
in a per curiam decision, followed by five opinions, none of which
commanded a majority for its entirety. Three other judges joined in
all of Judge Kozinski's decision, and two more joined in parts of it.
The language at issue is in section III(B), which commanded only four
votes.

1 Even assuming that the language that the majority here quotes from
2 Johnson properly states Ninth Circuit law on binding precedent, the
3 majority decision in this case to reject the Levoy precedent cannot be
4 sustained. The majority dismisses the Levoy holding, that service of a
5 claim objection is governed by Rule 7004, as an "offhand statement,"
6 that is "almost an assumption," and thus not entitled to precedential
7 weight. I cannot agree. This statement was not made "casually and
8 without analysis," or "in passing without due consideration of the
9 alternatives," or merely a prelude to another legal issue that commands
10 the panel's full attention" The issue before this panel was
11 clearly litigated fully in Levoy. This holding is one of the central
12 decisions in the appellate decision. It clearly is not an occasion
13 where the panel "did not make a deliberate decision to adopt the rule of
14 law it announced." I find five paragraphs devoted exclusively to this
15 subject.

16 I disagree with the majority statement that "there is no discussion
17 of the notice language of Rule 3007" in Levoy. The discussion that I
18 quote supra is clearly about the language and substance of the notice
19 language in this rule. Thus, even under the Johnson language on which
20 the majority relies, Levoy constitutes binding precedent.

21
22 **2. Analysis Supporting Levoy**

23
24 The only fault that the majority can properly find with Levoy, in
25 my view, is that the Levoy panel did not articulate the grounds for its
26 decision in as much detail as the majority now prefers. Not even
27 Johnson supports disregarding the Levoy rule on these grounds.

1 Nonetheless, the Levoy rule, in my view, is based on solid grounds.
2 The more complete analysis is that Rule 7004 substitutes for Rule
3 9014(a) pursuant to the "otherwise governed" language of Rule 9014(a),
4 but it does not affect the remainder of Rule 9014. Three separate
5 considerations support this analysis.

6 First, the "otherwise governed" language is contained only in Rule
7 9014(a), and it is missing from the rest of the rule. If the drafters
8 of Rule 9014 had intended Rule 3007 to substitute for both subparts (a)
9 and (b), they would have drafted it as follows:

- 10 (a) **Motion.** In a contested matter not otherwise governed
11 by these rules:
12 (1) relief shall be requested by motion etc.;
- 13 (2) the motion shall be served in the manner
14 provided for service of summons and complaint by
15 Rule 7004 etc.

16 After this text, (relettered) subparts (c), (d) and (e) would follow.

17 This language would have accomplished what the majority finds that
18 Rule 3007 accomplishes. But the rule drafters did not write this
19 language into the rule. While this analysis of the form of the rule
20 alone may not carry the day,⁸ I believe that it deserves substantial
21 weight.

22 Second, there is nothing in Rule 3007 that parallels the provisions
23 following paragraph (a) in Rule 9014. The contents of Rule 3007 are
24 parallel to the contents of Rule 9014(a) only. Where Rule 9014(a)
25 provides that relief must be requested by motion, Rule 3007 provides
26 that an objection to the allowance of a claim "shall be in writing and

27 ⁸ Rule 9014 was a single paragraph until it was revised in
28 2002 and divided into subparagraphs. In its prior iteration, the "not
otherwise governed" language apparently applied to the language now
contained in subparagraph (b). The Advisory Committee Notes make no
mention of an intention to make the language inapplicable to
subparagraph (b). In consequence, I do not rely on the drafting alone
in my analysis.

1 filed." Where Rule 9014(a) provides that, "reasonable notice and
2 opportunity for hearing shall be afforded the party against whom relief
3 is sought," Rule 3007 provides, "a copy of the objection with notice of
4 the hearing thereon shall be mailed or otherwise delivered to the
5 claimant"

6 In these respects, the contents of Rule 3007 and Rule 9014(a) are
7 exactly parallel. The difference is solely that Rule 3007 is more
8 specific in two respects: (1) it provides for an actual hearing rather
9 than an opportunity for a hearing, and (2) instead of vaguely providing
10 for "reasonable notice," it specifies that a copy of the objection must
11 be delivered. This parallel structure of the language supports the
12 construction that Rule 3007 substitutes only for Rule 9014(a), and not
13 the remaining provisions of Rule 9014.

14 Third, there is no doubt that subparts (c), (d) and (e) of Rule
15 9014 apply to contested matters arising from claim objections. See,
16 e.g., 9 Collier on Bankruptcy ¶ 3007.01[1] (Alan N. Resnick & Henry J.
17 Sommer eds., 15th ed. 2004) (subpart (c) applies to claim objections).
18 Rule 9014(c) specifies that a number of rules in Part VII apply to
19 contested matters, including the rules providing for pleading special
20 matters (Rule 7009), joinder of parties (Rule 7021), civil discovery
21 (Rules 7026 and 7028-7037), findings by the court (Rule 7052),
22 judgments, including summary judgment (Rules 7054-7056), and execution
23 on judgments (Rule 7069). These rules lie at the core of litigation
24 procedures for bankruptcy claim objections. Thus the scope of the
25 "otherwise governed" language of Rule 9014(a) clearly does not extend to
26 all of Rule 9014.

27 The majority makes one additional argument to bring Rule 9014(b)
28 within the scope of the "otherwise governed" language of Rule 9014(a).

1 It points out that Rule 9014(b) provides for service of "the motion,"
2 which can only refer to motions under Rule 9014(a), and not the
3 "otherwise governed" contested matters (including claim objections).
4 Under this analysis, to apply to proceedings "otherwise governed," Rule
5 9014(b) would have to state something like, "the motion or other request
6 for relief." There is some force to this argument. However, in my
7 view, it does not carry the day. One could easily imply the "or other
8 request for relief" in Rule 9014(b), on the grounds that expressing it
9 in full would be too cumbersome, and courts should be sensible in their
10 application of the rules. The majority's argument on this point has
11 some weight, in my view, and might carry the day (although I would
12 consider it a close question) in the absence of Levoy. However, given
13 the controlling precedent of Levoy, in my view this analysis is
14 foreclosed.

15 Thus, consistent with the mandate of Levoy, service of an objection
16 to claim must be accomplished pursuant to Rule 9014(b), which requires
17 that it be served in accordance with the requirements of Rule 7004.

18

19 **D. Service on an Agent**

20

21 Rule 3007 makes no mention of service of a claim objection on an
22 agent in place of service directly on the creditor. Assuming that
23 service on an agent for a creditor is sufficient to satisfy the
24 requirements of Rule 9014(b) and Rule 3007, I disagree with the majority
25 that service in this case was sufficient.

26

27

28

1 **1. Rule 3007**

2
3 If Rule 3007 governs the service of a claim objection, as the
4 majority holds, service on an agent for the claimant (such as the legal
5 counsel served in this case) is not sufficient, in my view.

6
7 **a. Individual Service on the Claimant Herself**

8
9 Assuming that Rule 3007 governs the giving of notice of an
10 objection to a claim (a view that I do not share, as explained above),
11 it is clear to me that State Line did not comply with the requirements
12 of Rule 3007 in giving notice of the objection.

13 Rule 3007 requires that a copy of the objection "shall be mailed or
14 otherwise delivered to the claimant" It is uncontested that
15 State Line never delivered a copy of the objection (by mail or
16 otherwise) to Ms. Jorgenson. It only contends that it delivered the
17 copy to her attorney. Rule 3007 contains no authority for service on an
18 attorney or other agent of the claimant.

19 Unlike Rule 3007, Rule 7004 authorizes service on an agent. At the
20 same time, it clearly distinguishes between service upon a party and
21 service upon an agent. Rule 7004(b)(1) authorizes service by mail on an
22 individual if it is sent to one of two places: where the individual
23 regularly conducts a business or profession, or to the individual's
24 dwelling house or usual place of abode.

25 Rule 7004(b)(8) authorizes service by mail on an agent authorized
26 by appointment or by law to receive service of process, and its
27 requirements differ from those for service on an individual. The
28 requirements for service on the agent mirror those for service on an

1 individual (mail sent to the agent's business or home address).
2 However, in addition to service on the agent, Rule 7004(b)(8) requires
3 service of the papers on the principal also (as required by Rule
4 7004(b)(1), in the case of an individual), if the authorization to
5 receive service of process so requires. There is no similar provision
6 in Rule 3007.

7 I conclude that if, as the majority holds, service of a claim
8 objection is governed by Rule 3007 and not by Rule 9014, the service
9 must be made on the claimant and cannot be made on an agent (including
10 the claimant's counsel).

11
12 **b. Official Form B10**

13
14 Commendably, the majority does not turn to Rule 9014 to authorize
15 service of a claim objection through service on the claimant's agent.
16 Instead, the majority finds refuge in Official Form B10 ("Form B10") and
17 finds that, in this case, Form B10 authorized service on the claimant
18 through her counsel. The majority places much weight on the box on the
19 claim form specifying, "Name and address where notices should be sent."
20 In my view, this box cannot carry this weight.

21 Notice and service are very different. See In re Association of
22 Volleyball Professionals, 256 B.R. 313, 319-20 (Bankr. C.D. Cal. 2000).
23 The provisions for giving notice apply in situations that are very
24 different from those where service is required.

25 The giving of notice is generally governed by Rule 2002. Service
26 of process, in contrast, is governed by Rule 7004. These issues are
27 placed in different rules because they serve very different functions in
28 the bankruptcy process. See Association of Volleyball Professionals,

1 256 B.R. at 319-20; Boykin v. Marriott Int'l, Inc. (In re Boykin), 246
2 B.R. 825 (Bankr. E.D. Va. 2000).

3 Notice in a bankruptcy case is required in a wide variety of
4 situations. There are many actions that may be taken in a bankruptcy
5 case that affect the general administration of the case and all
6 creditors generally, but none specifically. Generally, these matters
7 only require general notice to creditors. See Association of Volleyball
8 Professionals, 256 B.R. at 319-20; Boykin, 246 B.R. at 828. The general
9 notice for many such actions is governed by Rule 2002, including the
10 meeting of creditors (Rule 2002(a)(1)), the proposed use or sale of
11 property outside the ordinary course of business (Rule 2002(a)(2)), a
12 hearing for approval of a compromise or settlement (Rule 2002(a)(3)), a
13 dismissal or conversion hearing (Rule 2002(a)(4)), a fee request
14 exceeding \$1,000 (Rule 2002(a)(6)), a disclosure statement hearing (Rule
15 2002(b)), and a plan confirmation hearing (Rule 2002(b)). Other rules
16 (including Rule 3007, in my view) provide for notice of other kinds of
17 actions. For a typical creditor, most of these events may be of little
18 or no interest. The address for giving notice, as provided in Form B10,
19 is for giving notice of the type contemplated in Rule 2002 and the other
20 rules providing for creditor notice.

21 One purpose of filing a claim is to notify the parties in interest
22 that the claimant is in fact a creditor in the case. Apart from the
23 proof of claim, these parties may be altogether unaware of the claimant.
24 It follows from the filing of the claim that the claimant is entitled to
25 notice of the many different kinds of activities in the case. Thus it
26 is appropriate that the proof of claim include an address for giving
27 such notice.

1 In contrast to matters where notice to creditors generally is
2 sufficient, the bankruptcy rules recognize that a particular creditor is
3 entitled to a different quality of notice when that creditor's rights
4 become an issue in a bankruptcy case. See Boykin, 246 B.R. at 829. For
5 example, such specific rights are involved in a claim objection or a
6 motion to sell property free and clear of a creditor's lien. Service
7 pursuant to the requirements of Rule 7004 is required before an estate
8 may take action of this kind. See id.

9 An objection to the creditor's claim falls in this category,
10 because the objection is vitally important to the particular creditor.
11 If the objection is successful, the creditor loses any right to receive
12 a dividend from the estate and loses its status in the case. In
13 addition, the objection may include a counterclaim, pursuant to which
14 the creditor may lose a lawsuit if the creditor does not respond
15 appropriately. Mere notice, of the sort appropriate for the many other
16 types of bankruptcy events in which the creditor may have little
17 interest, does not suffice to alert a creditor to this consequence. For
18 this reason, the bankruptcy rules require service of a claim objection
19 on a creditor of the type required for a summons and complaint before
20 action can be taken on the objection (and especially on an attached
21 counterclaim), so that it will be brought to the attention of the
22 appropriate personnel of the creditor who are trained to deal with such
23 legal problems. This duty does not fall on a clerk who puts his or her
24 name in the box of Form B10 for notice purposes. See id. at 828.

25 State Line notably had no burden in finding Ms. Jorgenson's
26 address: she put it next to her signature on each proof of claim.
27 Nonetheless, State Line failed to send the claim objections to her at
28 the stated address.

1 **c. Function of Rule 3007 Notice**

2
3 The function of the Rule 3007 notice is not difficult to divine.
4 The notice provided there is "notice of the hearing" on the claim
5 objection.

6 Rule 3007, as I understand it, envisages a three-step process:
7 filing the claim, filing and serving the objection, and subsequent court
8 proceedings thereon. This corresponds, in a civil lawsuit, to the
9 filing of a complaint, the filing and service of an answer, and giving
10 notice of subsequent court hearings on the dispute. The notice required
11 in Rule 3007 is to inform the creditor of the time and place for the
12 commencement of the subsequent court hearings. It is not a substitute
13 for service of the claim objection (which is the functional equivalent
14 of an answer in a civil lawsuit).

15
16 **2. Rule 7004**

17
18 Because Rule 7004 applies to the service of a claim objection, in
19 my view, I must address whether service of the claim on Ms. Jorgenson's
20 attorney satisfied the requirements of that rule.

21 The authority of an agent to accept service under Rule 7004 may be
22 either express or implied. Service on an attorney is proper when the
23 client's actions indicate that the client has expressly or impliedly
24 delegated such authority to the attorney. See Rubin v. Focus Media (In
25 re Focus Media), 387 F.3d 1077, 1082 (9th Cir. 2004), cert. denied, ___
26 U.S. ___, 125 S.Ct. ___ (March 21, 2005). Service on counsel is
27 sufficient to satisfy the requirements of Rule 3007 only if counsel
28 expressly represents the creditor for the purpose of service of process

1 (which does not appear in this case) or has such authority by
2 implication. Id. Neither applies in this case.

3
4 **a. Express Representation for Service of Process**

5
6 It is common ground that Ms. Jorgenson's attorney had no express
7 authorization to accept service of process or service of the claims
8 objections on her behalf, except to the extent that Form B10 may have
9 granted him such authorization. In my view, the entry of the attorney's
10 name in the notice box of Form B10 was no more availing to appoint him
11 as an express agent under Rule 7004 than it was under Rule 3007.
12 Accordingly, I see no express authorization for counsel to receive
13 service on Ms. Jorgenson's behalf.

14
15 **b. Implied Representation for Service of Process**

16
17 In Focus Media, the Ninth Circuit found that a court may find
18 implied authority to receive service of process in limited instances
19 where the lawyer has repeatedly represented that client in the
20 underlying bankruptcy case, and where the totality of the circumstances
21 demonstrates the intent of the client to grant such implied authority.
22 See 387 F.3d at 1079. I agree with the majority's conclusion that
23 implied agency is not seriously argued in this case, and that the facts
24 do not support such a finding.

25 //

26 //

27 //

28 //

1 received any notice of the numbers assigned to her claims. Apart from
2 the claim numbers, there is no information on the first page of the
3 document, or even in the several following pages, from which Ms.
4 Jorgenson could determine that her two claims were a subject of this set
5 of objections.

6 Indeed, in this voluminous document there are only two pages, page
7 16 and page 157, that appear to make any recognizable reference to Ms.
8 Jorgenson's two claims. Page 16 has a single paragraph (fifteen lines
9 long) stating that nothing in the debtors' books and records supports
10 Ms. Jorgenson's claim. Page 157 is a copy of one of her two proofs of
11 claim.

12 Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950),
13 is the leading case on due process in the bankruptcy context. Mullane
14 teaches us that,

15 [a]n elementary and fundamental requirement of due
16 process in any proceeding which is to be accorded
17 finality is notice reasonably calculated, under all the
18 circumstances, to apprise interested parties of the
19 pendency of the action and afford them an opportunity to
20 present their objections.

21 Id. at 314. Mullane requires not only that notice be adequately
22 delivered, but also that it "be of such nature as reasonably to
23 convey the required information" Id. Mullane further
24 states that, "[t]he means employed must be such as one desirous of
25 actually informing the absentee might reasonably adopt to
26 accomplish it." Id. Finally, under Mullane, these issues are
27 evaluated, for due process purposes, "with due regard for the
28 practicalities and peculiarities of the case" Id.

In my view, the claims objections here at issue fall fatally
short of these requirements. If State Line had desired actually to

1 inform Ms. Jorgenson that it was objecting to her claims, it would
2 have put her name in the caption of the objection document, or
3 somewhere else on the first page or two, to make sure that the
4 document called to her attention the fact that it purported to
5 affect her individual claims.

6 Instead, in my view, State Line made a deliberate effort to
7 hide the identity of the claimants whose claims it was disputing.
8 In this document of at least 157 pages, Ms. Jorgenson could find
9 out that her claims were at issue only by looking at page 14 or
10 page 157: no other page in the entire document would give her the
11 slightest clue that it related to her claims.

12 Claims objections in large bankruptcy cases, like these cases,
13 typically run to hundreds of pages and can sometimes be as thick as
14 several telephone books. When nothing appears on the face of the
15 claim objection to apprise a claimant that the debtor is objecting
16 to that claimant's claim, such as was the case here, I believe that
17 the objection fails to satisfy the Mullane requirement that service
18 be reasonably calculated to "apprise interested parties of the
19 pendency of the action." Mullane, 339 U.S. at 314.

20 Given these undisputed facts, I would find that the fourth set
21 of claims objections was not "reasonably calculated, under all the
22 circumstances, to apprise [Ms. Jorgenson or her counsel] of the
23 pendency of [the claims objections] and to afford them an
24 opportunity to present their objections," as required by Mullane.

25 In large cases such as these, it may be convenient to group
26 claim objections together for administrative convenience. Grouping
27 objections together reduces the number of separate papers that
28 counsel has to keep track of, that a court has to docket, that

1 chambers staff is required to organize, and that the judge has to
2 read. However, filing claims objections in a group does not excuse
3 the objecting party from giving notice that is reasonably
4 calculated to put each claimant on notice that the objection
5 includes that claimants claim.

6 The typical procedure for giving such notice is to put the
7 claimant's name in the caption of the document. This procedure has
8 the advantage that the claimant's name also appears on the docket
9 and can be found easily. Alternatively, it may be sufficient to
10 put the names of numerous claimants below the caption or to provide
11 a list of the claimants at issue immediately after the caption,
12 perhaps on the second page of the document.

13 In my view, due process as articulated in Mullane requires
14 sufficient information on or near the first page of the document to
15 catch the attention of a particular claimant whose claim is put at
16 issue. In my judgment, this set of claim objections falls far
17 short of these due process requirements with respect to Ms.
18 Jorgenson.

19 However, I give no weight to these due process considerations
20 in my dissent herein because this issue was explicitly waived by
21 counsel for Ms. Jorgenson on oral argument.

22 23 **IV. Conclusion**

24 For the foregoing reasons I am persuaded that Rule 9014(b)
25 applies to the service of a claim objection on a claimant. Because
26 the requirements of Rule 9014(b) were not satisfied with respect to
27 Ms. Jorgenson in this case, I respectfully dissent from the
28 majority opinion.