

**UNITED STATES BANKRUPTCY COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK**

**PROTOCOL FOR THE EMPLOYMENT OF CLAIMS  
AND NOTICING AGENTS UNDER 28 U.S.C. § 156(c)**

An application seeking to retain a claims and noticing agent under 28 U.S.C. § 156(c) ["Section 156(c) Application"] should be limited in scope to those duties that would be performed by a Clerk of Court with respect to providing notice and processing claims (such as maintaining a claims register).<sup>1</sup> The Section 156(c) Application should exclude those duties that would *not* be performed by a Clerk of Court, for example, duties involving the preparation of schedules, acting as balloting and tabulation agent, or distributing assets pursuant to a confirmed plan of reorganization; such services should be the subject of a *separate* application to and order of the Court.

To ensure the use of a competitive process in the selection of claims and noticing agents in instances where the Court has authorized such use under 28 U.S.C. § 156(c), the following protocol have been established for this Court:

1. A debtor or trustee seeking to retain a claims and noticing agent under chapter 7, 11 or 15 shall obtain and review engagement proposals from at least three (3) court approved claims and noticing agents. A list of approved claims and noticing agents is accessible at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).
2. An application for retention of a claims and noticing agent shall contain an affirmative statement – under penalty of perjury and Fed. R. Bankr. P. 9011– that the applicant chose the claims and noticing agent after the review and competitive comparison of at least three (3) proposals.
3. As a condition of retention, the claims and noticing agent has a duty to comply with all relevant statutory provisions and rules of procedure, including local rules of procedure, general orders and applicable guidelines.
4. As a condition of retention, the claims and noticing agent shall agree to maintain records of all services which, at a minimum, will show dates, categories of services, fees charged, and expenses incurred.
5. The fee structure shall be included in the engagement agreement. The engagement agreement shall be annexed to the application for retention.
6. The claims and noticing agent shall serve monthly invoices on the committee, if any, monitoring the expenses of the debtor, and any party-in-interest who requests service of the monthly invoices.

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<sup>1</sup> The duties that would be performed by a claims and noticing agent are listed in paragraph 9 of the attached Section 156(c) Application.

7. If requested by the claims and noticing agent, the debtor or trustee may pay an agreed sum as a retainer to cover fees and expenses such as postage, printing, publication, etc.
8. If any dispute arises relating to an engagement agreement or monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute. If resolution is not achieved, the parties may seek resolution of the matter from the Court.
9. Debtor's counsel shall notify both the Clerk's Office and the claims and noticing agent within seven (7) days of an order of dismissal or conversion of the case.
10. At the end of a case or upon termination of the claims and noticing agent's services, the debtor or the trustee must obtain a termination order to terminate the services of the claims and noticing agent. The claims and noticing agent is responsible for archiving the claims with the Federal Archives Record Administration, if applicable.

Other than the specific obligations of the applicant, debtor or the trustee set forth above in paragraphs 1, 2, 9 and 10, the failure to comply with the duties set out in this Protocol, as applicable, and with the provisions set out in a Section 156(c) Application and order may lead to removal of the claims and noticing agent's name from the list of approved agents. Claims and noticing agents should be a disinterested person as that term is defined in Section 101(14) of the Bankruptcy Code with respect to the matters upon which it is to be engaged.

Dated: November 15, 2011

Vito Genna  
Clerk of Court