



AMERICAN
BANKRUPTCY
INSTITUTE

2018 Annual Spring Meeting

Consumer: Revisiting FRBP 3015.1 – How Courts and Cases Are Implementing Rule 3015.1 Five Months On

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The New Bankruptcy Rules Regarding Service in Chapter 13 Cases

Changes to the Federal Rules of Bankruptcy Procedure took effect on December 1, 2017. There were certain significant changes to service requirements in chapter 13 cases. The following is a summary of these new service requirements.

Rule 3015(c) now requires that the new national form plan (Official Form 113) be filed unless the judicial district where the case was filed has adopted a local form plan that complies with Rule 3015.1. Service of the plan is governed by Rule 3015(d). Under the old Rule 3015(d), the plan or a plan summary was required to be included with the notice of the confirmation hearing sent pursuant to Rule 2002. Now, Rule 3015(d) has eliminated the option of serving a plan summary, which means the entire plan must be served. Also, Rule 3015(d) no longer requires the plan to be served with the notice of confirmation hearing. If the plan is not served with the notice of the confirmation hearing, the debtor must serve the plan when it is filed.

Rule 2002 was changed as well. Subsection (b)(3) now requires the bankruptcy clerk to give all parties in interest at least twenty-eight days' notice of the date of the confirmation hearing in a chapter 13 case. Further, the new subsection (a)(9) requires the clerk to give all parties at least twenty-one days' notice of the time for filing objections. Pursuant to Rule 3015(f), the deadline for filing objections to confirmation is now seven days prior to the confirmation hearing. Previously, the rule merely stated that objections must be filed prior to the confirmation of the plan.

Rule 3012 has been significantly changed. Pursuant to subsection (b) of that rule, debtors are now permitted to request a determination of the amount of an allowed secured claim through a chapter 13 plan provision. Such a determination may also be made by motion or in a claim objection. The prior rule only permitted such a determination be made by motion. If a debtor

includes such a provision, the plan must be served pursuant to Rule 7004. In other words, the plan must be served in the same manner as a summons and complaint in an adversary proceeding. In most cases, service via first class mail will suffice under Rule 7004(b). However, it is important to note that Rule 7004(b)(4) requires that service by first class mail on a corporation must be sent to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service. Service of a plan which includes a provision determining the value of a secured claim held by a corporation cannot simply be mailed to a business address. Such service will not be sufficient. It is also important to note that Rule 3012 requires that a determination of the value of a secured claim held by a governmental unit must be made by motion or claim objection, not in a plan provision. Further, a request to determine the amount of a claim entitled to priority may be made only by motion after a claim is filed or in a claim objection. Also, Rule 4003(d) states that debtors attempting to avoid a lien pursuant to 11 U.S.C. § 522(f) may do so by motion or through the plan; however, if they wish to avoid a lien in the plan, the plan must be served pursuant to Rule 7004.

Bankruptcy Rule 5009 has added a new subsection (d) which states that if a claim that was secured by property of the estate is subject to a lien, the debtor may request the entry of an order declaring the claim satisfied and that the lien has been released pursuant to the plan. Such a request must be made by motion and served pursuant to Rule 7004 (i.e., in the same manner as service of a complaint and summons).

Finally, the amended rules made some changes to requirements for proofs of claim and claim objections. First, Rule 3002(a) now explicitly states that a secured creditor must file a claim for such claim to be allowed. However, that same subsection does state that a valid lien is not void due only to the secured creditor's failure to file a claim. Rule 3002 also shortens the claims bar

date for all creditors other than governmental entities to 30 days. Finally, Rule 3007(A) requires that objections to claims be served on a claimant by first-class mail to the person designated on the claim. If the objection is to a claim of the United States, it must be served in the manner of a summons and complaint pursuant to Rule 7004. Pursuant to Rule 7004(B), service shall also be made by first class mail on the debtor and the trustee.

The following are common service issues in consumer bankruptcy cases.

The distinguishing feature of Rule 7004 is nationwide service by mail. So generally, service by mail is acceptable. Rule 7004(b) begins as follows:

Service by first class mail. Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e) - (j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

How to serve an individual.

Paragraph (1) of Rule 7004(b) provides for service:

Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.

Note that the Rule 7004(b)(1) **does not** permit a mailing to a post office box.

How to serve a Domestic or Foreign Corporation, Partnership or Other Unincorporated Association.

Paragraph (3) of Rule 7004(b) provides for service:

Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

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This rule requires that the corporate officer or agent be identified by name. Hence, mailing a motion to "ABC Loan Company, 125 Main Street, Houston, Texas 77001" or to "President, ABC Loan Company" would not constitute sufficient service.

The internet has become the easiest way to determine the name of an office. Otherwise, you can be "old school" and simply pick up the phone and call. The names of registered agents for service of process may be obtained from the secretary of state website in the state where the company is incorporated or has registered to do business.

In preparing service, pay careful attention to the name of a business entity and include the full name of the entity in both the motion and the certificate of service. There are many corporations with similar sounding names or multiple affiliated corporations. Serving the wrong company may mean that the order or judgment is worthless.

How to service The United States, its Officers and Agencies.

Paragraphs (4) and (5) of Rule 7004(b) provide for service:

Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States.

Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of

the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. If the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, service may be made as prescribed in paragraph (10) of this subdivision of this rule.

Service on the United States or an officer or agency of the United States requires at least two mailings, one of which will be addressed to the civil clerk at the office of the U.S. attorney for the district in which the action is commenced. Therefore, a litigant in the bankruptcy court cannot effectively sue or seek by motion relief against the Internal Revenue Service by serving only the I.R.S.

This is the address that is most often missed:

United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

I have often wondered how the Department of Justice processes the large amount of mail they must receive in bankruptcy cases.

How to serve a State, Municipal Organization or Other Governmental Organization.

Paragraph (6) of Rule 7004(b) provides for service:

Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.

Note that the identity of the official to be served under Paragraph (6) is a function of the law of the state in which service is to be made.

Service on the Debtor.

Paragraph (9) of Rule 7004(b) provides for service:

Upon the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing.

Debtors (and their counsel) frequently forget the command in Bankruptcy Rule 4002(a)(5) to file a statement of any change of the debtor's address. The debtor's address for purpose of notice and service of process is the one listed in the petition, unless the debtor files a statement of a change of address. In a joint case, there are two debtors and two separate estates. Each debtor is entitled to separate service.

Service on the United States Trustee.

Paragraph (10) of Rule 7004(b) provides for service:

Upon the United States trustee, when the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending.

This seems to create no issues in consumer bankruptcy cases, except when the United States Trustee is omitted from the service list.

Service of Process on an Insured Depository Institution.

The rules for service on corporations set out in Bankruptcy Rule 7004(b)(3) do not apply to depository institutions insured by the F.D.I.C. such as national banks.

Bankruptcy Rule 7004(h) provides the following:

Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless—

- (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
- (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Finding out the name of an officer of a bank or other insured institution should not be too difficult as they are often available on the internet. However, some credit card issuers are member banks of the F.D.I.C. and have no branch offices for service. The F.D.I.C. publishes a list of its member institutions on its web site at www.fdic.gov.

Methods of Service that are problematic.

Serving a motion in a contested matter on the lawyer who represented a respondent in prior litigation is not effective unless that lawyer is an officer of a corporate respondent or the registered agent for service of process or is otherwise authorized to accept service of process on behalf of the respondent in the bankruptcy case.

Bankruptcy Rule 9010(b) provides the following:

An attorney appearing for a party in a case under the Code shall file a notice of appearance with the attorney's name, office address and telephone number, unless the attorney's appearance is otherwise noted in the record.

A notices of appearance, however, can be limited or may be worded in very different ways. In my opinion, a notice of appearance asking for service of notices in the case by the Clerk does not prove that the attorney's client authorized the attorney to accept service of process. It would take a more overt act, such as the notice stating that the attorney is authorized to accept service of process.

If the post office returns as undeliverable mail containing a motion, there is the question of what to do. Depending on the facts, the service may or may not have been effective. In any event, a pleading filed with the court with a statement stating the facts about the returned mail gives notice to the Court and other litigants.