

## Guidance for Service in Contested Matters

Improper service of process calls into question a court’s personal jurisdiction, making a judgment or order entered against the improperly served party subject to attack.

Federal Rule of Bankruptcy Procedure (“FRBP”) 9014(b) provides that a motion in a contested matter must be served in accordance with the manner of service provided for service of a summons and complaint under FRBP 7004. Some types of contested matters identified in the Bankruptcy Rules include:

- A motion to appoint a trustee or examiner (*See* FRBP 2007.1(a))
- An objection to confirmation or modification of a chapter 12 or chapter 13 plan (*See* FRBP 3015(f),(g))
- An objection to confirmation of a chapter 9 or chapter 11 plan (*See* FRBP 3020(b)(1))
- A motion for relief from the automatic stay (*See* FRBP 4001(a)(1))
- A motion for authorization to use cash collateral (*See* FRBP 4001(b)(1))
- A proceeding to avoid a lien or other transfer of exempt property (*See* FRBP 4003(d))
- An objection to the proposed use, sale or lease of property (*See* FRBP 6004(b),(d))
- A motion to sell property free and clear of liens and other interests (*See* FRBP 6004(c))
- A proceeding to assume, reject or assign an executory contract or unexpired lease, other than as part of a plan (*See* FRBP 6006(a))
- A motion for an order of contempt (*See* FRBP 9020)
- A motion to remand a removed claim or cause of action (*See* FRBP 9027(d))

There is not an exhaustive list of what constitutes a contested matter. Some matters are contested matters but are not specifically mentioned in a Bankruptcy Rule. The Advisory Committee Notes to FRBP 9014 guide that “[w]henver there is an actual dispute, other than an adversary proceeding, before the bankruptcy court, the litigation to resolve that dispute is a contested matter.” A contested matter has been described as “[a]ny dispute or potential dispute in a bankruptcy case for which a plaintiff or movant is not required to file an adversary proceeding” and as “[a] motion or objection that seeks to affect the rights of the respondent whether or not the respondent files a response or appears at a hearing to oppose the motion.”<sup>1</sup> **There is no substitute for counsel’s own legal analysis of whether the pleading being filed is a contested matter and upon whom and in what manner it should be served.**

The Court has encountered numerous instances of improper service in contested matters, especially with regards to service on corporations and on insured depository institutions.

FRBP 7004(b)(3) applies to service by mail upon a domestic or foreign corporation, partnership, or other unincorporated association. Service on a corporation under FRBP 7004(b)(3) must be directed

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<sup>1</sup> “Service of Pleadings in Contested Matters” Hon. James E. Massey, United States Bankruptcy Court for the Northern District of Georgia. February 10, 2005.

“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.”<sup>2</sup>

FRBP 7004(h) applies to FDIC-insured depository institutions (e.g., banks and credit unions) and requires that service on an FDIC-insured depository institution must be made by certified mail addressed to an officer of the institution unless one of the exceptions to this requirement set forth in the rule applies. This rule does not allow service on a registered agent.

Guidance for serving governmental entities can be found in FRBP 7004(b)(4),(5), and (6). The Rule requires that the United States be served both upon the civil process clerk for the local United States Attorney’s Office and upon the Attorney General of the United States as well as upon the officer or agency if applicable. State and local governmental entities must be served in accordance with applicable state law. The identity of the official to be served under FRBP 7004(b)(6) is a function of the law of the state in which service is to be made. For service in Indiana, consult the Indiana Rules of Trial Procedure.

Information concerning agents for service of process may be available on the internet. See <https://inbiz.in.gov/BOS/Home/Index> for the Indiana Secretary of State’s Business Services Division. See <https://www5.fdic.gov/idasp/advSearchLanding.asp> for a directory of institutions covered by the FDIC .

The Court encourages careful attention in searching for a specific business entity, as it is crucial to identify the correct entity when using either of the above resources. For example, a search for “Beneficial” on the Indiana Secretary of State’s database produces four pages of results, and “Beneficial Credit Services Inc.” is a wholly separate business entity from “Beneficial Credit Solutions, LLC”. As another example, “Discover Bank” is an FDIC-insured institution subject to FRBP 7004(h), whereas “Discover Financial Services” is a general corporation subject to FRBP 7004(b)(3).

It is also crucial to provide the Court with adequate information to determine whether proper service was provided. Include the full name of the entity in both the motion and the certificate of service. The certificate of service should also include the name of each person served, the manner of service, the address at which service was made on that person, and if the person served is an agent, the capacity of the agent.

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<sup>2</sup> Courts are split on the question of whether service must be to the attention of a specifically named person (e.g., Attn: Joe Smith) or whether service to the attention of an office (e.g., Attn: President) is sufficient. The Seventh Circuit has not addressed this issue specifically. Bankruptcy courts within the Seventh Circuit have held that the text of Bankruptcy Rule 7004(b)(3) “does not require that a plaintiff serve by name the corporate office or managing or general agent” reasoning that “the plain language of the Rule mandates only that the mailing be sent to the attention of an officer or managing or general agent. See *In re Outboard Marine Corp.*, 359 B.R. 893, 899 (Bankr. N.D. Ill. 2007).