

PRACTICE TIPS

Service On Corporations And Partnerships in Motion Practice. The most common error lawyers make in serving pleadings is failing to follow Rule 7004 when the defendant or respondent is a corporation. Rule 7004 applies not just to the summons and complaint in an adversary proceeding but also to motions in contested matters. Any dispute or potential dispute in a bankruptcy case for which a plaintiff or movant is not required to file an adversary proceeding is a contested matter. See Bankruptcy Rule 9014. Rule 9014 incorporates Bankruptcy Rule 7004.

Assume that the defendant/respondent is ABC Finance Corp. Perhaps that is address the debtor gave the attorney and is the address on the mailing matrix and schedules. A typical certificate of service for a summons and complaint or for a motion states that the attorney mailed the pleading to ABC Finance, 1234 Peachtree Road, etc. Such service is insufficient (with the possible exception of a motion to disallow a claim (objection to claim) where the creditor filed a proof of claim and specified itself as the name and address where notices should be sent). It is insufficient because it does not comply with Bankruptcy Rule 7004(b)(3) dealing with service of process on a domestic corporation or partnership. The defect deprives the court of jurisdiction over the defendant/respondent.

Rule 7004(b)(3) provides in part that service on a corporation or partnership may be made "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." It is not enough to address the envelope: "Attention President." The officer must be served by name.

Information concerning agents for service of process may be available on the Internet. For example, the Georgia Secretary of State maintains an on-line data base of agents for service of process for both Georgia corporations and corporations incorporated elsewhere but registered to do business in Georgia. See: www.sos.state.ga.us/corporations/corpsearch.htm.

A monograph on service of pleadings in bankruptcy cases is posted on Judge Massey's page on the Court's website.

Serving The Lawyer In The State Court Case. A common practice in contested matters is serving the motion only on the creditors's lawyer, who may have represented the creditor in a state court case and may have appeared in the bankruptcy case. There is nothing wrong with serving a lawyer who is thought to represent a creditor as a courtesy; indeed, such service may lead to an efficient, less costly resolution of the matter. As indicated above, however, effective service on a respondent in a contested matter or a defendant in an adversary proceeding requires strict adherence to the applicable rule. Service on the respondent or defendant is necessary if the lawyer is not an officer of, or agent for service of process for, the respondent or defendant. The fact that a person is an attorney for a respondent does not make that person its agent for service of process.

Serving Individuals By Mail. If the respondent or defendant is an individual, Rule 7004 requires service by mail "at the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession . . ." In contested matters, individuals cannot be served at post office boxes.

Do Not Forget To Serve The Trustee. Movants often fail to serve the trustee. Bankruptcy Rule 9013 provides in relevant part: "Every written motion other than one which may be considered ex parte shall be served by the moving party on the trustee or debtor in possession . . ."

Check Pleadings To Be Sure They Are Complete. It is not uncommon to find pleadings filed in bankruptcy cases that state "[a]ttached is a copy of [FILL IN THE BLANK]," but the document mentioned is not attached. Please be sure that pleadings are complete.

Read What You File Before You File It. Computers in general and word processing programs in particular can help us all to be more efficient. But it is essential not to let boilerplate language become a substitute for thinking and for asking the question: is this form appropriate for the circumstances? It is, unfortunately, not uncommon for a lawyer for a movant, after winning the motion because no one appeared for the respondent, to submit a proposed order that begins "[h]aving heard argument from the respondent's counsel . . ."

The Necessity of Evidence. If facts material to the outcome of a case are disputed, the court cannot decide the case on the basis of argument. If facts are in dispute, come to court prepared to prove the facts. To avoid unnecessary expense, coordinate with opposing counsel about what is or is not in dispute. If the other side will not respond or is unreliable, use the discovery rules, including Rule 7036, dealing with requests for admissions, made applicable by Rule 9014. Schedule the hearing far enough out to complete discovery.