From: George Weiss [redacted]
Sent: Tuesday, September 10, 2019 2:37 PM
To: Laura Bartell [redacted]
Subject: RE: FRBP 7004(h) Bankruptcy suggestion D (rules)

Madam Secretary,

This regards pending suggestion D for the bankruptcy committee's meeting on September 26, 2019.

The attached June 13th, 2019 memorandum (first attached) was written by the committee's associate reporter Professor Bartell, recommending no action and proposing this result for that upcoming meeting's consent agenda.

Generally speaking, Professor Bartell's main concern with suggestion D is that the committee is constrained by what it can do because the underlying rule was written by Congress, and the Bankruptcy Rules Enabling Act, unlike the regular (non-bankruptcy) rules enabling act, lacks a suppression provision and thus, rules can not change Congress-written rules.

Obviously, although I agree, that Congress' rule can't be re-written by rule promulgation, as I explain to Professor Bartell in my email yesterday, and in response to her memorandum, there are issues that Congress *did not* address in the rule, and which Professor Bartell also did not address in her memorandum and that I think still deserve a fair shot before the committee.

Accordingly, yesterday, I wrote Professor Bartell the (second attached) follow up.

Specifically as I mention, Congress did not specify or define *who* an "officer" is for the purpose of process receipt. The bankruptcy code also nowhere defines who an "officer" of a corporation is. Thus, I believe the committee should be free to specify *who* an officer is, and specifically, to allow service on an officer already appointed by that corporation to accept process in every other context-the resident agent.

In the alternative, the Rules committee should specify what it *means* to "address" service "to an officer." Is service "on an officer" complete if the officer is not named but the service is addressed "officer of corporation?" or is the name of the officer required "John Doe, officer of X corporation?" This issue is also not in the current rule, or the bankruptcy code, nor addressed in Professor Bartell's recent memorandum, and different judges would currently come to differing conclusions for similarly situated people.

As I mention, unless this issue is dealt with creatively, but, of course, within the confines Congress has given us, and unless either process can be addressed "officer" (without a name) and/or process is acceptable on a resident agent, it can be impossible to serve an officer by name who is not a resident agent (and therefore publicly listed) or available to look up because

the officers' names are private in a private corporation. (Being a publicly held corporation is not a requirement to be FDIC insured). This makes service impossible-and that's obviously not the intent of Congress.

In addition, from a creditor's prospective, having all service *except* bankruptcy service directed to a resident agent, and then bankruptcy process directed by certified mail to a CEO, doesn't make for efficient actual notice.

However, in her quick reply to me earlier today (see below), Professor Bartell made clear that she feels uncomfortable talking to me outside normal protocol, and that all my correspondence should be addressed to you.

Accordingly, please address this message where it is best heard.

Thanks,

George Weiss
[redacted]

From: Laura Bartell [redacted]
To: [redacted]
Subject: RE: FRBP 7004(h) Bankruptcy suggestion D (rules)
Date: Tue, 10 Sep 2019 13:07:31 +0000

Dear Mr. Weiss,

Thank you for your interest in the rules process. Please address any correspondence about a pending suggestion to RulesCommittee_Secretary_dca_ao.uscourts.gov.

Thank you!

Laura Bartell

From: George Weiss [redacted]
Sent: Monday, September 09, 2019 5:26 PM
To: Laura Bartell [redacted]
Subject: FRBP 7004(h) Bankruptcy suggestion D (rules)

Professor Bartell,

I saw your rebuttal to my suggestion today (see attached).

I don't know if you saw the last page of my suggestion (not the footnote-which you already discussed) which is another attempt to deal with the problem: It was the last page of the suggestion and was after my example motion so its buried way down there).

The statute does not define officer of a corporation: No bankruptcy statue defines who an officer of a corporation is. Thus why can't a rule say that a resident agent designated by a corporation at a state agency to receive process is an Officer for the purpose of receiving process?

In the alternative, is process addressed "officer of BANK" acceptable. Or does the process need to name an officer? That's also not dealt with by the text of the statute.

Please understand, if process requires an officer be named, and the resident agent is not acceptable, and the company is not public, it is impossible to know how to validly serve a corporation for routine matters such as lien valuations. As such, I urge the committee to look for things not foreclosed by congress (the two added possibilities above) to address this issue.

George Weiss
[redacted]