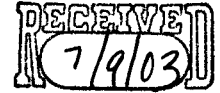


UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
U. S. COURTHOUSE, SUITE 8W
300 SOUTH FOURTH STREET
MINNEAPOLIS, MINNESOTA 55415



ROBERT J. KRESSEL
JUDGE

03-BK-B

July 2, 2003

Peter G. McCabe, Secretary
Committee on Rules of Practice and
Procedure
Administrative Office of the United States Courts
OJP-AD/4-180, Thurgood Marshall Building
One Columbus Circle, N.E.
Washington, DC 20544

Re: Bankruptcy Rules

Dear Peter:

I write to ask the Advisory Committee on Bankruptcy Rules to consider a number of the current bankruptcy rules.

1. Rule 7004(b)(3). I think that this rule is currently ambiguous and needs attention. It is copied, in large part, from Civil Rule 4(h), except, of course, for the provision for service by mail. In the Civil Rule, the requirement that it be served on one of the designated people makes sense. Because you are generally accomplishing personal service, the person serving process has to seek out the person, serve the process, and whatever return of service is provided to the court would contain the name and, hopefully, the office of the person that actually received the process. When you are serving by mail under Rule 7004(b)(3), it doesn't work as well, at least as written. The question that the rule leaves unanswered is whether, when the pleading is mailed, the envelope must have the actual name of one of the qualifying people or whether simply using the title is sufficient? Thus, frequently complaints or other pleadings are addressed to "President, ABC Corporation, etc." Arguably, this complies with the rule. I've also seen returns of service in which the address simply copied the language of the rule, so that the envelope was addressed to "Officer, Managing or General Agent, ABC Corporation . . ." I am not sure that either of these examples meets the spirit of the rule, which is to ensure that the complaint or other service of process shows up in the hands of someone who will actually have the incentive and the authority to deal with it.

While I suppose that resolution of this can wait a decision of a court, I would personally prefer that the Rules Committee address it.

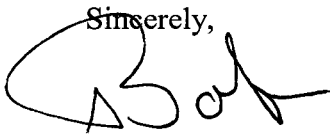
2. My second issue also deals with the subject of service. Rule 3007 deals with objections to claims and contains what I find to be somewhat odd language. It provides that “a copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant. . . .” I would think that an objection to claim is a contested matter which would require service under Rule 7004. Maybe that is implied, so that the idea is that, not only will the objection be served, but that a copy will be mailed as provided in the rule, although I doubt that this is what is meant. I would think that the rule can be changed to provide for “service” on the claimant. Whether service on the other entities is appropriate or merely notice, I leave to the Committee to decide. In general, it seems to me the rules use the concepts of either service or notice, but this idea that it be mailed without specifying whether that is service or notice, creates an ambiguity.

If the Committee decides to address this rule, I have a related suggestion which ties in somewhat into the first issue I raised. I would think that it might be appropriate to provide that service on the claimant could be made by mailing a copy of the objection and a notice of the hearing to the person who signed the proof of claim on behalf of the claimant. At least in those situations where a proof of claim has been filed. This service could be an optional service in addition to that service provided in Rule 7004 or in lieu of Rule 7004, whichever the Committee thought makes the most sense.

3. Lastly, on a less momentous note, I would ask that the Committee consider adding the Clerk of the Bankruptcy Appellate Panel to those entities listed in Rule 5005(c).

Please give my personal regards to the members of the Committee, especially the Chair.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob", with a large, stylized initial "R" or "B" at the start.

Robert J. Kressel

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

ANTHONY J. SCIRICA
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PETER G. McCABE
SECRETARY

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July 14, 2003

Honorable Robert J. Kressel
United States Bankruptcy Court
U.S. Courthouse, Suite 8W
300 South Fourth Street
Minneapolis, Minnesota 55415

*Re: Your Suggestion for Amendments to Federal Rules of Bankruptcy Procedure
3007, 5005(c), and 7004(b)(3) (Docket Number 03-BK-B)*

Dear Judge Kressel:

Thank you for your letter of July 2, 2003, suggesting amendments to Bankruptcy Rules 3007 (serving a copy of the objection on the claimant), 5005(c) (adding the Clerk of the Bankruptcy Appellate Panel to the list of persons identified in the rule), and 7004(b)(3) (raising concerns that service on a corporation by mail may not reach appropriate individual). A copy of your letter has been sent to the chair and reporter of the Advisory Committee on Bankruptcy Rules for their consideration. We will notify you of the committee's decision on your proposal.

We welcome your suggestion and appreciate your interest in the rulemaking process.

Sincerely,



Peter G. McCabe
Secretary