

GENERAL SERVICE ISSUES, SERVICE ON INSURED DEPOSITORY INSTITUTIONS, AND DEFAULT JUDGMENT MOTIONS AND THE SERVICEMEMBERS CIVIL RELIEF ACT

Obtaining Service/Default Motions on Adversary Proceedings

A plaintiff should attempt to obtain service within a reasonable time after filing an adversary proceeding. Once service has been executed, and the time for an answer or other responsive filing has passed, a plaintiff should seek a default judgment or take some other action. Adversary proceedings which are filed, but un-acted upon for lengthy periods of time, may risk dismissal for lack of prosecution.

Service on Insured Depository Institutions

See Bankruptcy Rule 7004(h) concerning service upon an insured depository institution. **The court will require service upon an insured depository institution by certified mail addressed to a registered agent or to the attention of an officer or a managing or general agent of the institution for all adversary proceedings and for any extraordinary relief sought against such an institution, including but not limited to motions for violation of the stay or for violation of the discharge injunction.** The court will also require in such instances that the specific name of an officer and the officer's title be included as part of the service.

The following exceptions allow service on an insured depository institution to be made by first-class mail:

- the institution has appeared through its attorney; or
- the institution has waived **in writing** its entitlement to service by certified mail and has designated an officer to receive service.

Information concerning whether an entity is an insured depository institution can be found at www.fdic.gov/deposit/index.html.

Service on Corporations In Adversary Proceedings

Pursuant to Bankruptcy Rule 7004(a), Federal Rule of Civil Procedure 4(h) - Service Upon Corporations and Associations - applies to adversary proceedings. Under Rule 4(h) the summons may be sent to an officer or agent of the corporation. Alternatively, Rule 4(h) allows service of a corporation to be based on the state law where the bankruptcy court is located. See Federal Rule of Civil Procedure 4(e)(1). Under Ohio Rule of Civil Procedures 4.2(F), in addition to the previously mentioned options, service can be made, by certified or express mail, to any of a corporation's "usual places of business."

Default Judgment Motions and the Servicemembers Civil Relief Act

In pursuing default judgment in an adversary proceeding against an individual, the motion for default judgment must comply with the Soldiers' and Sailors' Civil Relief Act of 1940, as amended by the Servicemembers Civil Relief Act in 2003.

When an individual defendant has not made an appearance, a plaintiff shall file an affidavit stating whether or not the defendant is in military service and "showing necessary facts to support the affidavit[.]" 50 App. U.S.C. § 521(b)(1)(A). Alternatively, if a Plaintiff is unable to make such a determination, the affidavit shall so indicate. 50 App. U.S.C. § 521(b)(1)(B). "Military service" is defined in 50 App. U.S.C. § 511(2) and includes active duty, including the National Guard under defined circumstances,

and when “a servicemember is absent from duty on account of sickness, wounds, leave or other lawful cause.”

To the extent a plaintiff lacks independent knowledge concerning whether a defendant is in military service, information is available on the Department of Defense website at the following link:

- <https://www.dmdc.osd.mil/appj/scra/scraHome.do>