M E M O R A N D U M

TO: All Attorneys with Bankruptcy Cases Assigned to My Docket

FROM: Pat E. Morgenstern-Clarren, United States Bankruptcy Judge, N.D. Ohio

DATE: 23 September 2011

RE: Tips for Obtaining Service on a Corporation Before Requesting a Clerk's Entry
                of Default/Default Judgment in an Adversary Proceeding

****

        Recently, I have reviewed a number of motions for default judgment in adversary
proceedings in which the plaintiff did not follow the Rules of Bankruptcy Procedure for how to
serve a corporate defendant. The recurring problem is that plaintiffs are mailing the summons
and complaint to corporate defendants at a Post Office box.

        The starting point for determining how to serve a complaint on a corporation is Federal
Rule of Bankruptcy Procedure 7004(a)(1), which states that Federal Rule of Civil Procedure 4(h)
applies in adversary proceedings. Federal Rule of Bankruptcy Procedure 7004(b)(3) also
provides a means for serving a corporation. Neither rule permits a plaintiff to serve a corporation
at a Post Office box. Some attorneys feel that if the corporate defendant lists a Post Office box
on a proof of claim that the box may be used for service of a summons and complaint; the rules
do not permit this.

        On a related issue, if the plaintiff serves the corporation by certified mail, a copy of the
signed receipt should be attached to the request for a clerk's entry of default. If the service is by
first class mail, the affidavit in support of the request for a clerk's entry of default should identify
the name and address of the individual served. An affidavit that just says "I served [defendant
corporation] on [date]" is insufficient to prove service under the rules and thus is insufficient to
support either a clerk's entry of default or a default judgment.

        Serving corporate defendants in accordance with the rules the first time will ensure that
all parties have appropriate notice and that plaintiffs will not have to spend additional time and
money making second attempts at service.

        Thank you for your anticipated attention to this issue.