

Tips on Serving Financial Institutions

The Court has observed inadequate service on financial institutions, namely banks and/or their servicing agents. The service issue arises most frequently with respect to motions, including those embedded in a Chapter 13 plan, to modify or strip off a bank's secured claim and in requests to institute the loss mitigation under the Court's Loss Mitigation Program. In an effort to assist the local bar to achieve proper and adequate service on such institutions, the Court provides these brief practice tips that will hopefully be helpful to practitioners. These practice tips are merely suggestions by the Court to assist counsel and are not mandates. Each attorney should utilize his or her own experience and judgment as to proper service on a case by case basis. However, unless specifically listed as the address for service or correspondence in a creditor's filed proof of claim, it is strongly recommended that all efforts be made to avoid service upon a financial institution using a post office box. The Court's understands that with respect to certified mail delivery to a post office box, notice that certified mail is being held at the applicable post office for the recipient is all that is delivered, not the actual document. Moreover, these addresses are usually just payment processing centers.

I. Service Should Be Made in Accordance with General Order 12-002

On November 14, 2012, the Court issued General Order 12-002.¹ Pursuant to this Order, when serving a document, counsel are required to use the addresses listed on the most recent Mailing Labels by Case available on the Court's ECF system as of the date service will be made, and attach to the certificate of service to be filed with the Court a copy of the Mailing Label(s) used to effectuate service. **If the Mailing Labels by Case contains more than one address for a particular party, then service should be made on all addresses listed unless counsel is aware that a particular address is ineffective.** If counsel has received notice that an address on the Mailing Labels by Case is no longer valid, counsel can indicate same on the certificate of service and Mailing Labels attached and need not serve any such address. Where the Mailing Labels by Case indicates that an entity has specified a preferred mailing address, counsel only needs to serve the entity at the preferred address.

II. Check the Claims Register

Pursuant to FED. R. BANKR. P. 2002(g), notices should be sent to an address specified in a filed proof of claim rather than any other address previously used for that creditor. The Mailing Labels by Case is designed to capture all notice addresses indicated in proofs of claim, thereby further ensuring that the most relevant addresses are being served. Nevertheless, it is

¹ Available at <http://www.rib.uscourts.gov/Docs/GeneralOrders/General%20ORDER%2012-002.pdf>. A notice of proposed amendment of LBR 9013-3 issued on December 19, 2012, slightly modifying GO 12-002. The proposed rule change is scheduled to take effect on January 28, 2013.

recommended that a party serving notice still review the claims register for additional service addresses listed on a proof of claim form for service or correspondence.

III. Suggestions for When No Proof of Claim has Been Filed and You Have No Contact Directly from Counsel or the Financial Institution.

A. Check Addresses Listed on the Website for the Rhode Island Department of Business Regulation

The Rhode Island Department of Business Regulation maintains comprehensive lists of, among other entities, banks operating within Rhode Island. These lists also provide various addresses for such banking authorities, including service addresses for statutory agents. These lists are located at <http://www.dbr.state.ri.us/divisions/banking/license.php>.

B. Check for Service Addresses on the Website for the Rhode Island Secretary of State

The Rhode Island Secretary of State maintains addresses for all corporations registered to do business in Rhode Island, including providing service addresses for statutory agents for numerous national banks. A search on the Rhode Island Secretary of State's website for additional service addresses is recommended at the following link: <http://ucc.state.ri.us/CorpSearch/CorpSearchInput.asp>.

C. Check for Service Addresses on the Website for the FDIC

Banks that are insured by the Federal Deposit Insurance Corporation (the “FDIC”) are referred to as “insured depository institutions.” *See* 12 U.S.C. § 1813(c)(2) (“The term ‘insured depository institution’ means any bank or savings association the deposits of which are insured by the [FDIC] pursuant to [28 U.S.C. et. seq.].”). A search on the FDIC website will produce addresses for each branch location of an insured depository institution. *See*² <http://www2.fdic.gov/IDASP/main.asp>. Counsel should be aware that **R.I. LBR 3015-1(c)(1)(A) [chapter 13 plans seeking to modify secured claims] requires service to be made to an “insured depository institution” in accordance with FED. R. BANKR. P. 7004(h), which, in turn, requires service to be made on an *officer of the institution*.**

D. Check for Service Addresses on the Website for the National Information Center

“The National Information Center (NIC) provides comprehensive information on banks and other institutions for which the Federal Reserve has a supervisory, regulatory, or research

² By way of example, a search for all “Bank of America, National Association” offices in Providence, RI revealed addresses for twelve (12) branch locations.

interest including both domestic and foreign banking organizations operating in the U.S.”³ A search may be conducted at this link: <http://www.ffiec.gov/nicpubweb/nicweb/SearchForm.aspx>.

E. Check for Notice Addresses Listed in the Promissory Note or Mortgage

Typically, promissory notes and/or mortgage documents will contain a section which identifies the contact person and address where notices should be sent.

F. Search Addresses Available on the Department of Treasury’s Website

Banks that are participating in the Home Affordable Modification Program (“HAMP”) have agreements with the U.S. Department of the Treasury which may contain additional notice addresses on which service can be made. These agreements can be found online at the following link: www.treasury.gov.

³ <http://www.ffiec.gov/nicpubweb/content/help/NICFAQ.htm#nic>.