

B-3011-1
Payment of Unclaimed Funds

(a) A motion or other request for the payment of unclaimed funds, which have been deposited with the court pursuant to 11 U.S.C. § 347(a), Fed. R. Bankr. P. 3010 or Fed. R. Bankr. P. 3011, must be made through an attorney who is a member of the bar of this court, unless the entity entitled to receive payment is a natural person making the request on its own behalf and not as an agent or other representative of the claimant.

(b) The motion shall be accompanied by an affidavit, together with any appropriate supporting documentation, executed by the claimant demonstrating the claimant's present entitlement to the funds. If the claimant is the entity for whose benefit the funds were originally deposited, the affidavit shall contain a statement to the effect that the right to payment has not, in any way, been transferred or assigned to any other entity.

(c) If the claimant is not a natural person, the affidavit required by paragraph (b) shall be executed by an officer, director, general partner, or other individual authorized to do so and shall be accompanied by proof that the individual executing the affidavit has been authorized to do so on behalf of the claimant and of the capacity in which the individual acts.

(d) The motion and a notice of the motion shall be served upon the United States Attorney, in the manner required by Fed. R. Bankr. P. 7004, and shall be accompanied by a proof of service showing the address to which service was directed and the manner in which service was made.

(e) In the absence of an objection or other response from the United States Attorney, within thirty (30) days of the date the motion is filed, the court may determine the motion, without further notice or hearing.

(f) The failure to comply with the requirements of this rule may result in the motion being denied.

Commentary (1994)

This rule is designed to implement 28 U.S.C. §2042, concerning the manner in which money deposited with the court is retrieved. Beyond requiring notice to the U.S. Attorney and proof of entitlement, the statute is silent as to how this is to be done. The Bankruptcy Code and Rules deal only with depositing the money with the court and do not speak to getting it out. The rule is largely prompted by the problems the court has recently encountered in this area due to “unclaimed funds locators.”

Paragraph (a) does nothing more than reiterate the court’s general rule requiring entities other than natural persons to appear through counsel. This seems to be appropriate since the motion asks for a court order, based upon a judicial determination that the movant has proven its entitlement to funds in possession of the clerk. Although such a restatement of the general rule is arguably unnecessary, it has been reiterated for ease of reference and for the sake of clarity. It is also legitimately applied to the scenario presented by fund locators. These individuals often are not attorneys and base their right to proceed upon a power of attorney authorizing them to collect the funds on the claimant’s behalf. Existing

law in Indiana indicates that this is improper. See Simmons v. Carter, 576 N.E. 2d 1278 (Ind. App. 1991)(judgment rendered in an action initiated on behalf of a plaintiff by a non-lawyer, acting pursuant to a power of attorney, was void).

Paragraphs (b) & (c) are designed to ensure that the motion makes a proper showing (ie. presents a prima facie case) concerning the claimant's right to distribution of the funds at the time the motion is made and that, in the case of a claimant other than a natural person, there is some type of verification that the individual executing the affidavit is what he purports to be - in other words, proof that the "president" of the corporation is really the president.

Paragraph (d) is nothing more than a restatement of the requirements of a proper proof of service.

Paragraph (e) is designed to implement the statutory requirement of notice to the U.S. Attorney, by ensuring that it as an appropriate opportunity to file any response.

Paragraph (f) serves only to provide public notice of the consequences of a failure to comply with the requirements of the rule.