

B-9013-3
Service Upon Committees

(a) Where the court has authorized a committee which has been elected or appointed to employ counsel, service upon the committee shall be made by serving counsel and, if known, the chair of the committee.

(b) Where the court has not authorized a committee which has been elected or appointed to employ counsel, service upon the committee shall be made by serving each member thereof and, if such a committee is a committee of unsecured creditors, service shall also be made upon the entities included on any list required by Fed. R. Bankr. P. 1007(d).

Commentary (1994)

Many Bankruptcy Rules (and the proposed local rules) require motions and notices to be served upon court authorized committees. How this is accomplished (i.e. service upon every member, the committee chair, and/or counsel) is not specified in any detail and even Bankruptcy Rule 7004(b)(3) (service upon unincorporated associations) is somewhat lacking. Paragraphs (a) and (b) attempt to fill this gap by identifying how service is made depending upon whether or not the committee has been authorized to retain counsel.

One of the consequences of the recent revision of the Bankruptcy Rules is an increased importance given to the creditors included on the Rule 1007(d) list (20 largest unsecured creditors), in terms of the various papers that are to be served upon them. Service upon the 20 largest is not, however, necessary when an unsecured creditors committee has been authorized. In this instance, service upon the committee replaces service upon the 20 largest. In the Northern District of Indiana, committees, of any kind, are rare and active committees, even more so. When a committee of unsecured creditors does not actively participate in the proceeding, it is just as good as no committee whatsoever. Therefore, the rationale which justifies service upon an unsecured creditors committee fails. The last portion of paragraph (b) is based upon this reality. When a committee does not retain counsel, experience has shown that it generally will not actively participate in the bankruptcy. In this instance, the spirit of the Bankruptcy Rules is better served by requiring service upon the 20 largest unsecured creditors as well as upon the individual committee members. Since the committee is usually drawn from among the 20 largest, compliance with the rule will be no more burdensome than if a committee had never been appointed.