

5/94

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION (BANKRUPTCY)

P R A C T I C E N O T E

1994 NO 5

INDIVIDUAL INSOLVENCY : BANKRUPTCY : STATUTORY DEMAND :
BANKRUPTCY PETITION : SUBSTITUTED SERVICE

1___This Practice Note, which takes immediate effect, is intended to assist petitioners and practitioners in dealing with difficulties encountered in connection with service of statutory demands and bankruptcy petitions. It will be understood, however, that it is issued subject to Rule 6.010-CP(9) of the Insolvency Rules (Northern Ireland) 1991 ('the 1991 Rules') and without prejudice to the court's discretion to decide upon a question of service as it sees fit in any particular case.

Statutory Demand:

2___Practitioners are reminded that, subject to the overriding obligation to do all that is reasonable to bring a statutory demand to the debtor's attention, advertising the demand, as an alternative to personal service or some other mode of substituted service, can only be used as a means of service where the pre-conditions referred to in Rule 6.003(3) of the 1991 Rules have been satisfied.

3___Subject to this, as there is no statutory form of advertisement, the court will accept an advertisement in the form set out in the Schedule hereto.

4___Practitioners are also reminded that the provisions of Rule 6.010-CP(6) of the 1991 Rules apply in all cases where substituted service is effected. The following paragraphs of this Practice Note are intended to give guidance as to the minimum steps which might be sufficient to justify the making of an order for substituted service of a bankruptcy petition.

Bankruptcy Petition:

5___In most cases, the following evidence will suffice to justify an order for substituted service of a bankruptcy petition:

(a) At least two personal calls at the residence and place of business of the debtor, where both are known, or at whichever of such places as is known. Where the debtor is known to have more than one residential or business address, personal calls should be made at all the addresses.

(b) Should the creditor fail to effect personal service, a first class pre-paid letter ('the appointment letter') should be written to the debtor referring to the calls, the purpose of the same and the failure to meet with the debtor, adding that a further call will be made for the same purpose at the address, date and time specified therein ('the appointment'). At least two clear business days' notice should be given of the appointment.

The appointment letter should also state that (i) in the event of the appointment not being convenient, the debtor should name some other date, time and address reasonably convenient for the purpose (ii) if the debtor fails to keep the appointment or any such substituted appointment, application will be made to the court for an order for substituted service either by advertisement or in such other manner as the court may think fit. Copies of the appointment letter should be sent to the debtor at all his known addresses.

(c) At least one of the calls made to the debtor's residential address(es) should be made outside normal working hours.

(d) In attending any such appointment, inquiries should be made as to whether the debtor has received all letters left for him. If the debtor has not been personally contacted at any of his known addresses, inquiries should also be made as to whether or not letters are being forwarded to an address in Northern Ireland or elsewhere, and evidence must be obtained to show that the debtor has some continuing presence at his address or addresses. Otherwise his absence might suggest that he has gone away. Particulars identifying the source or sources of information obtained on foot of such inquiries should be given.

(e) Subject to the provisions of Rule 6.010-CP(5) of the 1991 Rules, the supporting affidavit(s) should deal with all the above matters including all relevant facts as to the debtor's whereabouts and whether the appointment letter(s) has(have) been returned.

6___ Subject to the power of the court to direct service to be effected in such manner as it thinks fit, the standard order for substituted service will authorise service to be effected by inserting through the letter box at the debtor's address(es), in a sealed envelope addressed to the debtor, a sealed copy of the petition and a copy of the order for substituted service, and will provide that service be deemed to be effected on the third day after such insertion. It is important, therefore, to establish beforehand whether or not there is a functioning letter box at the address at which it is proposed to effect substituted service. If the court makes an order for substituted service by first class ordinary post, the order will normally provide that service be deemed to be effected on the seventh day after posting.

S C H E D U L E

(Form of advertisement of statutory demand)

STATUTORY DEMAND

(Debt for sum payable under a court judgment or order)

To: (insert debtor's full name
and address, including post
code)

TAKE NOTICE that a statutory demand has been issued by:
(insert creditor's full name and address,
including post code)

The creditor demands payment of £ _____ the amount now due on
a judgment/order of the (High Court of Justice in Northern

Ireland Division) (County Court for the Division
of) dated 199 .

The statutory demand is an important document and it is deemed to have been served on you on the date of the first appearance of this advertisement. You must deal with this demand within 21 days of the service upon you or you could be made bankrupt and your property and goods taken away from you. If you are in any doubt as to your position, you should seek advice immediately from a solicitor or your nearest Citizen's Advice Bureau. The statutory demand can be obtained or is available for inspection or collection from:

(insert full name and address, including post code,
telephone and reference of creditor's solicitor)

You have only 21 days from the date of the first appearance of this advertisement before the creditor may present a bankruptcy petition.



J Basil C Glass
MASTER (BANKRUPTCY)

DATED: 30 June 1994.