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(Bankr Judge)

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To Peter McCabe/DCA/AO/USCOURTS@USCOURTS

cc

Subject A rule suggestion

Mr. McCabe

This is to follow up on my e-mail of 04/06/2005 that was discussed at the last Advisory Committee meeting. Upon further research, I would like to urge the fallback position that a court may authorize corporations and other entities to appear in cases involving less than \$5000 without counsel. This would honor the local culture that either permits or denies access to small claims courts by entities not represented by counsel.

I see the need most often with regard to PA's in the health care area who have been defrauded by the diversion of insurance proceeds in personal injury claims. However as a general rule, we are denying access to court for the holders of such claims, as they must pay a filing fee of \$250 and then hire counsel. It just does not work, particularly when recovery is problematic as to a debtor.

A number of states now permit this representation by statute. These include Arizona, D.C., Kentucky, Illinois, Maine, Maryland, Missouri, and New Hampshire. See the Kansas Supreme Court decision in Babe Houser Motor Co. v. Tetrault, 14 P3d 1149 (2000). Other states such as New York bar corporations from filing claims in Small Claims Court. While the Supreme Court held in Osborn v. Bank of the United States, 22 US 738 (1824) that a corporation may only appear by an attorney, I suggest that if that this modification were presented to the Court, it would not find that the holding in Osborn prevents the implementation of this change. Moreover, this suggestion is in the spirit of the amendment to section 341(c) that allows corporations to appear at meetings of creditors without an attorney.

Maryland has had this practice in place for a number of years. See Md Code Ann. Bus. Occ. & Prof. 10-206. Note that this section bars using full-time employees for this work, bars disbarred lawyers and bars such representation where the claim has been assigned to the entity.

Paul Mannes