

# **Guide to Filing an Adversary Complaint Without an Attorney**

## **I. Need for an Adversary Proceeding**

Pursuant to Federal Rule of Bankruptcy Procedure 7001, an adversary proceeding is required in the following circumstances:

- a. To recover money or property or for turnover of money or property;
- b. To determine the validity, priority, or extent of lien or other interest in property;
- c. To obtain approval for the sale of both the interest of the estate and of a co-owner of property;
- d. To object to or revoke a discharge;
- e. To revoke an order of confirmation of a plan;
- f. To determine the dischargeability of a debt;
- g. To obtain an injunction;
- h. To subordinate an allowed claim or interest;
- i. To obtain a declaratory judgment (i.e., a judgment explaining disputed law) relating to any of the foregoing; or
- j. To determine a claim or cause of action removed from a state court, pursuant to 28 U.S.C. § 1452 (i.e., title 28 of the United States Code, section 1452).

## **II. Starting an Adversary Proceeding**

An adversary proceeding is commenced by the filing of a complaint. A complaint is a written formal statement in which the party initiating the proceeding, the plaintiff, presents the facts and demands relief from the defendant, the person or entity the action is brought against. Each complaint is unique and there is no specific form provided by the Court. In drafting the complaint, please note that adversary proceedings are governed by the Local Bankruptcy Rules and Part VII of the Federal Rules of Bankruptcy Procedure. Per the Federal Rules, Federal Rule of Civil Procedure 3, governing pleadings and motions, is applicable to adversary proceedings. Additionally, the form of papers filed with the Court can be found in Local Bankruptcy Rule 9004-1.

The bankruptcy case must be open at the time the complaint is filed. If the bankruptcy case is closed, it will need to be reopened before the complaint is filed. To reopen the bankruptcy case, you

need to file a motion to reopen. There may be a reopening fee due. The reopening fee is in addition to the adversary filing fee, if due, as described below. If the reopening is for the debtor or other party to file a complaint to determine whether or not a particular debt was discharged or for the debtor to file an action to enforce the discharge, there is no reopening fee. If the reopening is to file a complaint for any other reason, there is a reopening fee due of \$260.00 for a Chapter 7 case and \$235.00 for a Chapter 13 case. A full list of reopening fees can be found on the Court's website under Fee Schedules.

### **III. Filing Fees for an Adversary Complaint**

The filing fee for an adversary complaint is \$250. The following parties are exempt from paying the filing fee:

- a. Any U.S. Government agency.
- b. A Chapter 7 or Chapter 13 debtor.
- c. A Chapter 11 individual debtor, or attorney representing debtor, only when filing a Complaint for Dischargeability of a Debt.
- d. A Chapter 7 trustee - the fee is due at the time of filing the complaint unless the trustee files a certification that insufficient estate funds are available. The fee is then deferred until funds become available.
- e. A Chapter 12 or Chapter 13 trustee - the fee is paid from the estate upon confirmation of the plan.
- f. A Chapter 11 trustee - the fee is due at the time of filing the complaint unless a motion and order to defer payment is filed with the complaint.
- g. A creditor owed child support by the debtor or such creditor's representative – the fee is not due provided the creditor or representative files Form B28, Appearance of Child Support Creditor or Representative.

### **IV. What is Required for Filing an Adversary Complaint?**

- a. A filing fee of \$250 (except when the filing fee is not required or is deferred).
- b. An original of the adversary complaint.
- c. An Adversary Proceeding Cover Sheet, required by Local Bankruptcy Rule 7003-1 (see Fill-In Forms on the Court's website for Form B104, Adversary Proceeding Cover Sheet).

- d. A summons issued by the Clerk's Office (the Clerk's Office will issue the summons and mail it to you).

## **VI. Service of Summons and Complaint**

If you have named the United States or a federal agency as a defendant, you are required to serve the U.S. Attorney and the Attorney General of the United States with a copy of the complaint and the summons (see section A.2.iii below). The summons and complaint may be served anywhere in the United States. For service in a foreign country, see Federal Rule of Bankruptcy Procedure 7004.

### **A. Methods of Service**

1. Personal Service – Is permitted by a person not less than 18 years of age and not a party to the complaint.
2. First Class Mail - Service may be made on defendants within the United States by first class U.S. mail postage pre-paid, except as stated below. Service by first class mail is also subject to the following requirements:
  - i. Mail service on an Insured Depository Institution (banks and other financial institutions whose deposits are federally insured) must be by certified mail addressed to a particular officer of the institution.
  - ii. If serving the bankruptcy debtor by mail, the summons and complaint must be mailed to the address stated on the bankruptcy petition or to such other address as the debtor may designate in a writing filed with the Bankruptcy Court. If the debtor is represented by an attorney, service must also be made on the attorney at the attorney's post-office address.
  - iii. Service on an Agency of the United States must be made to all three of the following addresses:
    1. U.S. Attorney for the District of Maryland, 36 S. Charles Street, 4<sup>th</sup> Floor, Baltimore, MD 21201
    2. Attorney General of the United States, Dept of Justice, Room B-103, 950 Pennsylvania Ave NW, Washington DC 20530-0001
    3. U.S. Agency Name, Street Address/PO Box, City State Zip Code (if nonparty agency or officer of the United States)

iv. Service on the United States Trustee by mail must be mailed to the following address:

1. Baltimore: United States Trustee Office, 101 W. Lombard Street, Room 2650, Baltimore, MD 21201
  2. Greenbelt: United States Trustee Office, 6500 Cherrywood Lane, Suite 300, Greenbelt, MD 20770
3. Publication - If a party cannot be served by personal service or first class mail, the Court may, on motion of the plaintiff, order at least one publication in such manner and form as the Court directs (example: newspaper) to satisfy the service requirement.

B. Time Limit for Service - Service must be made (or mailed) within fourteen days following the issuance date of the summons. If service is not timely delivered or mailed, another summons shall be issued and served, pursuant to Federal Rule of Bankruptcy Procedure 7004(e).

C. Certificate of Service - You must complete the Certificate of Service (Complaint and Summons) form located under Fill-In Forms on the Court's website and then file it as your Certificate of Service. This is a one-page form that tells the Court that a copy of your answer was mailed to the plaintiff's attorney and the United States Trustee. See Local Bankruptcy Rules 9013-4 and 9013-5 and Federal Rule of Civil Procedure 5 for guidance in completing the Certificate of Service.

## **VII. What is the Usual Course of an Adversary Complaint?**

Below is the timeline of typical adversary proceeding, from time of filing an adversary complaint to the time of dismissal or judgment.

- a. An adversary complaint is filed by the plaintiff and the Clerk's Office issues a
- b. The summons and complaint are served upon the defendant(s) and their attorney(s) plaintiff.
- c. The plaintiff files with the Court a Certificate of Service of the summons and
- d. The defendant files an answer to the complaint within 14 days of service.
- a. If an answer is not filed by the defendant, the plaintiff should file the proper have a default judgment entered against the defendant(s).
- e. The parties would then go through a pre-trial hearing, discovery, pre-trial filings, and then trial itself, until the judge renders a judgment or the parties reach a settlement. The adversary proceeding would then be closed.

## **VIII. How Do I Have the Court Enter a Default Against the Defendant?**

There are no specific forms available. You will prepare your own Application for Default and a separate Default Judgment. The Clerk's Office is permitted to enter a default only upon being presented with an Application for Default setting forth the facts. These facts should include the following:

- a. Date the adversary complaint was filed with the Court;
- b. Date the summons was signed/issued by the deputy clerk;
- c. Date you served the adversary complaint on the defendant and defendant's attorney;
- d. Date you filed your Certificate of Service with the Court;
- e. Statement that no answer has been received within the time limit fixed by the Court on the summons; and
- f. Statement that the defendant is not in the military service. If the defendant is or may be in the military service, the defendant is afforded certain protections which must be addressed prior to the Entry of Default.

If no Application for Default is filed and no significant activity has occurred in the adversary proceeding for six months, under Local Bankruptcy Rule 7055-1, the Court may take action to deny or dismiss without prejudice.

## **IX. Clerk's Entry of Default**

When an Application for Entry of Default is filed, the adversary case will be reviewed and if appropriate, the Clerk's Office will prepare and mail the Entry of Default to the interested parties. If the application is deficient, the Clerk's Office will notify the plaintiff regarding the deficiency.

## **X. Default Judgment**

The judge will review the application and either sign the Default Judgment or set the matter for hearing.

*\*These instructions have been made available with the assistance of the United States Bankruptcy Court for the District of Arizona.*