

GENERAL PRACTICES AND PROCEDURES BEFORE HON. GUY R. HUMPHREY

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## **Reaffirmation Agreements**

All reaffirmation agreements must be accompanied by a fully completed Reaffirmation Agreement Cover Sheet - [Bankruptcy Form 427](#). See Bankruptcy Rule 4008(a). Reaffirmation agreements filed without a cover sheet completed in its entirety as prescribed by Bankruptcy Form 427 may be presumed to impose an undue hardship on the debtor and set for hearing.

Further, the court strongly suggests that all reaffirmation agreements be prepared as prescribed by [Bankruptcy Form 2400A](#). Reaffirmation agreements, which fail to contain all of the disclosures required by 11 U.S.C. § 524 and appear significantly different from Form 2400A, will be denied. The court notes that Form 2400A and alternative Form 2400A/B ALT are both acceptable.

**The debtor's counsel is responsible for ensuring that filed reaffirmation agreements are in compliance with the requirements of 11 U.S.C. § 524 and Bankruptcy Rule 4008.**

[Click here to view Bankruptcy Forms on the U.S. Courts' website](#)

## **Relief from Stay Motions**

As a reminder, note that a relief from stay motion cannot be continued by a debtor without the consent of the moving creditor. All relief from stay motions must comply with the provisions of Local Bankruptcy Rule 4001-1. **If the collateral is a vehicle, the motion must include a certificate of title or a document that clearly is an electronic title.** Local Bankruptcy Rule 4001-1(a)(2).

## **Scheduling of Hearings and Trials Re: Self-Calendaring**

The court, and in Chapter 13 cases – the Chapter 13 Trustee – in conjunction with the court, schedules all contested matters and trials. In general, hearings are only scheduled in the event that an objection or response to the motion or application is filed in opposition to the relief sought in the motion or application. Accordingly, counsel should not place a hearing date and time in any motion, application, notice, or response or other filing unless specifically authorized by the court with such hearing date and time provided by the court.

## **Requests for Oral Argument on Motions to Dismiss, For Judgment on the Pleadings, Summary Judgment, or Any Other Contested Matter**

In the event that a party desires oral argument on a motion to dismiss, for judgment on the pleadings, summary judgment, or any other contested matter, that party may request oral argument by motion served on all other parties in interest. Such party may submit an order on any such motion on an *ex parte* basis without a 21 day notice.

### **Claim Objections and Avoidance of Liens**

In accordance with Local Bankruptcy Rule 3007-1(b), all objections to claims must refer to the claim numbers assigned by the clerk of the court (and shall not refer to the Chapter 13 Trustee's claim numbers unless such numbers are used in addition to the clerk's assigned numbers and are identified as such). Further, claim objections must be served on the notice address provided in the filed proof of claim, on the filing attorney (if any) at the address set forth in the proof of claim, and on any party required to be served by Local Bankruptcy Rule 9013-3.

**Failure to comply with all of these requirements may result in the objection being denied without prejudice.**

In accordance with Bankruptcy Rule 3007(b), a party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding. In the event a debtor or other party in interest objects to a claim on the basis of a lien being void or voidable, including as being wholly unsecured or as impairing the debtor's homestead exemption, and the avoidance issue has not been determined through an adversary proceeding or motion, the court will adjourn the claim objection pending the filing and determination of an appropriate adversary proceeding or motion. However, the court will entertain agreed orders signed by an appropriate representative of the holder of the lien avoiding the lien in lieu of the filing of an adversary proceeding or motion.

**Judge Humphrey permits motions or adversary proceedings for avoiding wholly unsecured mortgages in Chapter 13. Regardless, service must comply with Bankruptcy Rule 7004.**

**[PDF fillable Form Motion to Avoid Wholly Unsecured Mortgage](#)**

## **Motions to Avoid Judicial Liens Pursuant to 522(f) of the Bankruptcy Code**

Motions to avoid judicial liens encumbering real property must include the following information:

- 1) the address of the property on which the judicial lien is to be avoided;
- 2) the specific certificate of judgment to be avoided, including the amount of the certificate of judgment;
- 3) all other liens (mortgages, other certificates of judgment, etc.) on the property, including the amount of each lien;
- 4) the exemption the debtor is claiming to be impaired and the amount of the exemption;
- 5) the state law under which the debtor is entitled to the exemption.

For a motion filed within a Chapter 13 case, any proposed order to avoid a judicial lien must be conditioned on the debtor completing all payments in the plan or the debtor's discharge.

**Service must comply with Bankruptcy Rule 7004. Failure to comply with all of these requirements may result in the motion being denied without prejudice.**

[PDF fillable Form Motion to Avoid Judicial Lien Pursuant to 11 U.S.C. § 522\(f\)](#)

## **Obtaining Service/Default Motions on Adversary Proceedings**

A plaintiff should attempt to obtain service within a reasonable time after filing an adversary proceeding. Once service has been executed, and the time for an answer or other responsive filing has passed, a plaintiff should seek a default judgment or take some other action. Adversary proceedings which are filed, but un-acted upon for lengthy periods of time, may risk dismissal for lack of prosecution.

## **Service on Insured Depository Institutions**

See Bankruptcy Rule 7004(h) concerning service upon an insured depository institution. **The court will require service upon an insured depository institution by certified mail addressed to the attention of a specific officer, identified by name, for all adversary proceedings and for any extraordinary relief sought against such an institution, including but not limited to motions for violation of the stay or for violation of the discharge injunction.** The court will also require in such instances that the specific name of

an officer and the officer's title be included as part of the service. **When the method of service is certified mail and a party is seeking judgment by default, the court requires all signed return receipts ("green cards") to be filed either as a separate document or as an exhibit or attachment to the motion for default judgment.** In the event a signed return receipt has been lost after being returned to the serving party, an affidavit of the server may be filed with the motion stating, in addition to any other pertinent facts supporting the granting of default judgment, that the signed return receipt was returned by the postal service signed, but has been lost.

The following exceptions allow service on an insured depository institution to be made by first-class mail:

- the institution has appeared through its attorney; or
- the institution has waived **in writing** its entitlement to service by certified mail and has designated an officer to receive service.

**This rule applies to adversary proceedings and motions to avoid liens.**

[Click here for FDIC BankFind Website](#)

## Serv ice on the United States

Service on the United States must comply with all applicable rules. See Federal Rules of Bankruptcy Procedure 7004(a)(1), 7004(b)(4), 7004(b)(5), and 9014(c) and Federal Rule of Civil Procedure 4(i).

## Service on Corporations

Pursuant to Bankruptcy Rule 7004(a), Federal Rule of Civil Procedure 4(h) - Service Upon Corporations and Associations - applies to adversary proceedings. Under Rule 4(h) the summons may be sent to an officer or agent of the corporation. Alternatively, Rule 4(h) allows service of a corporation to be based on the state law where the bankruptcy court is located. See Federal Rule of Civil Procedure 4(e)(1). Under Ohio Rule of Civil Procedures 4.2(F), in addition to the previously mentioned options, service can be made, by certified or express mail, to any of a corporation's "usual places of business." **To the extent that service is made pursuant to state law and the summons and complaint are served by certified or express mail to a corporation's usual place of business, the signed return receipt ("green card") must be filed with any motion for default judgment (either as an exhibit or attachment to the motion or separately).** In the event a signed return receipt has been lost

after being returned to the serving party, an affidavit of the server may be filed with the motion stating, in addition to any other pertinent facts supporting the granting of default judgment, that the signed return receipt was returned by postal service signed, but has been lost.

**This rule applies to adversary proceedings and motions to avoid liens.**

### **Default Judgment Motions and the Servicemembers Civil Relief Act**

In pursuing default judgment in an adversary proceeding against an individual, the motion for default judgment must comply with the Soldiers' and Sailors' Civil Relief Act of 1940, as amended by the Servicemembers Civil Relief Act in 2003.

When an individual defendant has not made an appearance, a plaintiff shall file an affidavit stating whether or not the defendant is in military service and "showing necessary facts to support the affidavit[.]" 50 U.S.C. § 3931(b)(1)(A). Alternatively, if a Plaintiff is unable to make such a determination, the affidavit shall so indicate. 50 U.S.C. § 3931(b)(1)(B). "Military service" is defined in 50 U.S.C. § 3911(2) and includes active duty, including the National Guard under defined circumstances, and when "a servicemember is absent from duty on account of sickness, wounds, leave or other lawful cause."

To the extent a plaintiff lacks independent knowledge concerning whether a defendant is in military service, information is available on the Servicemember Civil Relief Act (SCRA) website.

[Click here for SCRA Website Record Search](#)

### **Mediation and Settlement Conferences**

All parties are encouraged to pursue settlement negotiations and alternative dispute resolution mechanisms prior to and during the time that any litigation is pending before the court. In the event the parties believe that a mediation or settlement conference may be of assistance in the resolution of the proceeding or contested matter, the parties may advise the court by contacting the Courtroom Deputy and the court will arrange for the appointment of a neutral third-party mediator, settlement judge, or settlement conference coordinator to conduct the conference.