

GENERAL PRACTICES AND PROCEDURES BEFORE HON. GUY R. HUMPHREY

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1.0 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](#)

2.0 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 copy of the Vehicle Registration Record (Ohio Bureau of Motor Vehicle Form BMV 1149 0301) provided pursuant to Ohio Revised Code § 4503.26(A).** Local Bankruptcy Rule 4001-1(a)(3).

3.0 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.

4.0 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.

5.0 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. **If the objection is to a claim of the United States, or any of its officers or agencies, or an insured depository institution, service must also be pursuant to Bankruptcy Rule 7004.** *See* Bankruptcy Rule 3007(a)(2)(A).

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.

The court encourages use of the Local Form Motions and Orders on the court's website.

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

6.0 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.

The court encourages use of the Local Form Motions and Orders on the court's website.

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

7.0 Service Pursuant to Bankruptcy Rule 7004

The court will require service pursuant to Bankruptcy Rule 7004 for all adversary proceedings, motions to avoid liens, motions to redeem, and claim objections against an insured depository institution and the United States and for any other extraordinary relief sought against an insured depository institution, the United States, the State of Ohio and any corporate entity, including but not limited to motions for violation of the stay or for violation of the discharge injunction. *See* Bankruptcy Rules 3007(a)(2), 7004(a)(1), 7004(b), 7004(h) and 9014(b) and Federal Rule of Civil Procedure 4(c).

The court will also require service pursuant to Bankruptcy Rule 7004 for Nonstandard Provisions involving the United States and its agencies included in Paragraph 13 of the Mandatory Chapter 13 Form Plan. *See* Bankruptcy Rules 7004(b)(4), 7004(b)(5) and Federal Rule of Civil Procedure 4(i).

7.1 Insured Depository Institutions

See Bankruptcy Rules 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.** 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.

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.

Counsel who have appeared on behalf of an insured depository institution, although receiving electronic notice through ECF as a registered participant, must be served by first class mail to meet the requirements of Bankruptcy Rule 7004(h). See ECF Procedure 2(e).

[Click here for FDIC BankFind Website](#)

7.2 United States and Its Agencies

See Bankruptcy Rules 7004(b)(4) and 7004(b)(5) and Federal Rule of Civil Procedure 4(i) concerning service upon the United States and its agencies. **The court will require service upon the United States by either first class, certified or registered mail addressed to:**

- 1) the civil-process clerk at the United States attorney's office;
- 2) the Attorney General of the United States at Washington, D.C.; and
- 3) the agency.

The receptionist in each of the United States Attorney's offices in this District (i.e. Cincinnati, Dayton, Columbus) accepts service of process for the United States Attorney as the "civil process clerk." The United States Attorney's preference however is service on the office (civil process clerk) where the matter is pending. The United States Attorney's office in Dayton is located at 200 W. Second Street, Suite 602, Dayton, Ohio 45402.

The Internal Revenue Service has registered its mailing address for where notices should be sent with the Clerk in accordance with Bankruptcy Rule 5003(e). See [Clerk's Register](#).

7.3 State of Ohio and Its Departments, Offices and Institutions

See Bankruptcy Rule 7004(b)(6), Federal Rule of Civil Procedure 4(j) and Ohio Rules of Civil Procedure 4.1(A) and 4.2(K) concerning service upon the State of Ohio. **The court will require service upon the State of Ohio, its departments, offices and institutions, by either first class, certified or express mail addressed to:**

- 1) the attention of the officer, identified by both name and title, responsible for administration of the department, office or institution; or
- 2) the Ohio Attorney General and the department, office or institution at the address registered with the Clerk or, if a proof of claim has been filed, at the address where notices should be sent.

The State of Ohio has registered mailing addresses for various state entities with the Clerk in accordance with BR 5003(e). See [Clerk's Register](#).

7.4 Municipal Corporation or other Governmental Organizations

See Bankruptcy Rule 7004(b)(6), Federal Rule of Civil Procedure 4(j) and Ohio Rules of Civil Procedure 4.1(A) and 4.2(N) concerning service upon municipal corporations and other governmental organizations. **The court will require service upon municipal corporations or upon any of its offices, departments, agencies, by either first class, certified or express mail addressed to:**

- 1) the attention of the officer, identified by both name and title, responsible for administration of the department, office, agency or institution; or
- 2) by serving the city solicitor or other comparable legal officer.

7.5 County in State of Ohio and Its Offices, Agencies, Districts, Institutions, Departments or Units

See Bankruptcy Rule 7004(b)(6), Federal Rule of Civil Procedure 4(j) and Ohio Rules of Civil Procedure 4.1(A) and 4.2(L) concerning service upon a county in the State of Ohio. **The court will require service upon a county or upon any of its offices, agencies, districts, departments, institutions or units by either first class, certified or express mail addressed to:**

- 1) the attention of the officer, identified by both name and title, responsible for administration of the office, agency, district, department, institution or unit; or
- 2) by serving the prosecuting attorney for the county.

7.6 Corporations

See Bankruptcy Rule 7004(b)(3), Federal Rule of Civil Procedure 4(h) and Ohio Rules of Civil Procedure 4.1(A) and 4.2(F) concerning service upon corporations. **The court will require service upon corporations either by first class mail to the attention of an officer or agent of the corporation or by certified or express mail to any of a corporation's usual places of business.**

8.0 Default Motions on Adversary Proceedings

8.1 Obtaining Service

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.

8.2 Proof of Certified Mail Service ("Green Cards")

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.

8.3 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](#)

9.0 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.