

**CHAMBERS PROCEDURES: JUDGE ELIZABETH E. BROWN  
UNITED STATES BANKRUPTCY COURT, DISTRICT OF COLORADO**

**ADVERSARY PROCEEDINGS**

**1. Initiating an Adversary Proceeding – Pro Se Plaintiffs**

An Adversary Proceeding is a lawsuit initiated in bankruptcy court that arises in or is related to a particular bankruptcy case. To initiate an Adversary Proceeding, a party must pay a filing fee and file a “Complaint” that lists the party being sued (the “Defendant”) and the claims being alleged against that Defendant. When a Complaint is filed, the Court Clerk will give the Adversary Proceeding a separate case number and issue a summons. The party initiating the lawsuit (the “Plaintiff”) is responsible for serving the Complaint and summons on the Defendant(s) in accordance with the Fed. R. Bankr. P. 7004, the applicable sections of Fed. R. Civ. P. 4. The Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules control the various procedures pertaining to Adversary Proceedings. Because the Rules are extremely complex, parties are strongly urged to consult with an attorney.

A common claim asserted in an Adversary Proceeding is a creditor seeking to have a particular debt owed by a bankruptcy debtor declared non-dischargeable under 11 U.S.C. § 523, or a claim seeking to deny a debtor a discharge of any debts under 11 U.S.C. § 727. Such claims must be pursued by initiating an Adversary Proceeding against the debtor. Simply sending a letter to the Court or Judge Brown’s chambers is insufficient. There are strict deadlines that apply to filing non-dischargeability claims. Those deadlines are set by the Bankruptcy Code and are listed in the Notice of Bankruptcy Case mailed out to all creditors when a bankruptcy case is filed.

**2. Re-Serving a Complaint: Obtaining an Alias Summons**

If a Plaintiff is unable to properly serve the initial summons and Complaint on the Defendant(s) within the time frame set forth in Fed. R. of Bankr. P. 7004(e), the Plaintiff must file with the Court a motion for issuance of an alias summons. Once an alias summons is issued by the Court Clerk, the Plaintiff must then serve the alias summons and Complaint on Defendant(s) in compliance with the Federal Rules of Bankruptcy Procedure.

**3. Pre-Trial and Trial Scheduling**

As a general matter, once all Defendants have filed an Answer to the Complaint, the Court will issue an Order for Compliance with Rule 7026. The Order for Compliance requires the parties to confer and file a joint report with suggested pre-trial deadlines. In some cases, a status conference will also be set. Once pre-trial deadlines are agreed upon, the Court will issue a Scheduling Order that sets all pre-trial deadlines. This Court generally does not set a trial date until after the dispositive motion deadline has passed and/or all dispositive motions have been ruled on.

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**4. Limits on Discovery**

Unless specifically waived by agreement of the parties and approved by the Court, the special provisions regarding limited and simplified discovery as specified in L.B.R. 7026-2 apply in all Adversary Proceedings before this Court. Under L.B.R. 7026-2, parties are limited to three depositions and service of one set of thirty written interrogatories on each adverse party.

**5. Expedited Discovery Dispute Procedures**

Parties should follow the Expedited Discovery Dispute Procedures in Adversary Proceedings. These procedures are posted in section titled *Courtroom Procedures*.

**6. Consolidation of Related Matters with Adversary Proceeding**

If a party has or anticipates having adversary claims and related contested matter(s) pending at the same time, the parties may request to have the contested matters consolidated into the Adversary Proceeding.

**7. Default Judgments**

This Court requires parties to follow the two-step process mandated by Fed. R. Civ. P. 55, made applicable by Fed. R. Bankr. P. 7055, for obtaining a default judgment. *See Williams v. Smithson*, 1995 WL 365988, at \*1 (10th Cir. June 20, 1995). First the moving party must file a motion for entry of default by the clerk pursuant to Fed. R. Civ. P. 55(a) and L.B.R. 7055-1(a). After the clerk's entry of default, the movant must then file a separate motion for default judgment in accordance with Fed. R. Civ. P. 55(b) and L.B.R. 7055-1(b).

**8. Witness and Exhibit Procedures at Trial**

Parties should follow the Witness and Exhibit Procedures and use the Witness and Exhibit Forms posted in the *Courtroom Procedures* section of this website.

**9. Interpreters**

Please see information on Interpreters posted in the *Courtroom Procedures* section of this website.

**10. Settlements**

**A. Settlements With Payments Over Time** - We often receive motions to approve settlement that request inconsistent relief. For example, the motion requests both dismissal of the action and the entry of judgment. Instead, parties have three options: (1) they can request dismissal; (2) parties can administratively close the adversary proceeding, subject to reopening at a later date, without fee, to either request entry of judgment (in the event of default), or dismissal (upon completed performance); or (3) parties can request an immediate judgment and closure of the adversary proceeding. The form of judgment may state that execution will be stayed pursuant to the terms of the settlement agreement.

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**B. Notice of Settlement** – This Court requires notice of an adversary settlement pursuant to L.B.R. 9013-1 in the main case whenever property of the estate is involved. For example, either the settlement or the abandonment of a claim held by the estate requires notice in the main case. A settlement that involves a disposition of property that was arguably property of the estate requires such notice. A settlement that requires the chapter 7 debtor to make payments over time from his/her post-petition earnings does not involve property of the estate and, thus, this Court would not require notice in the main case. A settlement of an adversary that stems from a main case in which a confirmed chapter 11 plan specifically provided that settlement of adversaries post-confirmation would not require notice, will not require notice, but the motion requesting the entry of an order in the adversary should specifically state that notice is not required for this reason. If notice is required in the main case, the parties may file a simple motion in the adversary requesting to hold the case in abeyance pending receipt of authorization in the main case, which will effectively vacate and/or stay pending deadlines.

**C. Settlement of Claims Under 11 U.S.C. § 727** - Pursuant to Fed. R. Bankr. P. 7041, this Court requires that notice be given to the Chapter 7 trustee, the United States Trustee and any other affected party. In particular, the parties shall file a notice in the Adversary Proceeding, bearing the adversary case caption, and serve it together with a copy of the 727 complaint and the motion to approve settlement on the Chapter 7 trustee and the United States Trustee and file a certificate of service evidencing compliance. The court shall then provide a deadline for objections.