

Starting and Serving an Adversary Proceeding

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1. What is an adversary proceeding?

- a. Informally, a separate civil action within a bankruptcy case.
- b. Formally defined in BR 7001:
 - 1) A proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002;
 - 2) A proceeding to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d);
 - 3) A proceeding to obtain approval under § 363(h) for the sale of both the interest of the estate and of a co-owner in property;
 - 4) A proceeding to object to or revoke a discharge, other than an objection to discharge under §§ 727(a)(8), (a)(9), or 1328(f);
 - 5) A proceeding to revoke an order of confirmation of a Chapter 11, Chapter 12 or Chapter 13 plan;
 - 6) A proceeding to determine the dischargeability of a debt;
 - 7) A proceeding to obtain an injunction or other equitable relief, except when a Chapter 9, Chapter 11, Chapter 12, or Chapter 13 plan provides for the relief;
 - 8) A proceeding to subordinate any allowed claim or interest, except when a Chapter 9, Chapter 11, Chapter 12, or Chapter 13 plan provides for subordination;
 - 9) A proceeding to obtain a declaratory judgment relating to any of the foregoing; or
 - 10) A proceeding to determine a claim or cause of action remove under 28 U.S.C. § 1452.
- c. Sources of the law:
 - Title 11, United States Code

- 28 U.S.C. §§157 and 1334
- FRBP (Part VII)
- FRCO
- Local Rules - ED & WD
 - Cannot conflict with FRBP
- District Court - 28 U.S.C. §157(d)
- Judge's procedures

d. Types of Adversary Proceedings:

- Recover Money or Property
 - Does not include:
 - Trustee motion for turnover
 - Request for abandonment
 - Disgorgement of fees by Debtor's counsel
- Determining the validity, priority or extent of a lien or interest in property
 - Avoidance of judicial liens
 - Avoidance of security interests in exempt property
- Involuntary sale of interests in co-owned property free and clear of the co-owner's interest
 - Sale of the Debtor's alone interest is by motion
- Denial or revocation of discharge
 - Except if denial is based upon Debtor not being entitled to discharge due to an earlier case
- Revocation of plan confirmation
 - Objections to confirmation are contested matters
- Dischargeability of a debt
- Injunctive or equitable relief
 - Does not include:
 - Relief related to the automatic stay
 - Subordination of Claim or Interest
 - Unless the subordination is pursuant to a confirmed plan
- Declaratory judgment with respect to any of the above

- Any action which has been removed from some other court to the bankruptcy court

2. Comparison to contested matters

a. All other disputes are resolved as contested matters, and are far more common.

- Contested matters include:
 - Relief from stay – BR 4001
 - Objections to plans – BR 3020(b)
 - Compensation disputes – BR 2017
 - Avoidance of liens – BR 4003(d)
 - Request for use, sale or lease of property – BR 6004
 - Assumption and rejection of contracts and leases – BR 6006
 - Abandonment – BR 6007
 - Dismissal
 - Conversion claim disputes – BR 3007(b)
- Resolved by motion. See generally BR 9014.

b. Adversary proceedings have separate complaints, separate case numbers, and require separate filing fees. Will result in a separate judgment.

3. Why you may want to use adversary proceedings.

a. The bankruptcy court may have exclusive jurisdiction. For example, determination of dischargeability under 11 U.S.C. 523(a)(2, 4 and 6)

b. Even where another court may have concurrent jurisdiction, the bankruptcy court may be a more favorable forum.

- Special expertise in commercial law and creditors' rights
- General awareness of goals and purposes of a fresh start for the honest but unfortunate debtor
- Understanding that exceptions to discharge are construed strictly against a creditor and liberally in favor of the debtor. See *Kolodziej v. Reines*, 142 F.3d 970 (7th Cir. 1998).

- c. **Unlimited jurisdiction over defendants.**
 - o A Wisconsin state court may have more difficulty in establishing jurisdiction.
 - d. **Ease of service of process.**
- 4. Pre-filing considerations**
- a. **Factual Investigation**
 - i. **As with any lawsuit, you must first do your homework and due diligence. The nature and extent of that investigation depends on the type of action being brought.**
 - b. **Elements (Caution: may require legal research)**
 - i. **Example: Student loans must satisfy the “undue hardship” test. You will already have the Debtor’s current income and expenses. You will still need evidence about the Debtor’s future prospects and inability to repay the student loan. You will also need the Debtor’s historical efforts to repay the loan.**
 - ii. **Example: Defalcation by a fiduciary.**
 - 1. **Existence of a trust**
 - 2. **Debtor is a fiduciary of the trust**
 - 3. **Fraud or defalcation by the debtor while acting as a fiduciary of the trust**
 - c. **Evidence**
 - i. **Example: Lien stripping of wholly unsecured junior mortgage lien.**
 - 1. **Recorded first mortgage**
 - 2. **Recorded junior mortgages**
 - 3. **Any and all assignments of liens**
 - 4. **Any subordination agreements**
 - 5. **Property value evidence**
 - 6. **Proof of balance owed on first mortgage (may be proof of claim or recent mortgage statement)**
 - 7. **Proof of real estate taxes owed**

ii. Example: Support vs. Property Division under § 523(a)(5) and (15).

1. Divorce judgment
2. Any judgment amendments
3. Marital Settlement Agreement
4. Negotiating evidence
5. Then-current financial information

5. Other pre-filing considerations

a. Who are the parties?

- Not always easy to determine. Mortgage loans are sold often and banks and mortgage companies are often merged or sold.
- Student loans may be held by the U.S. Department of Education. If so, USDOE is a proper defendant, whether as the original lender or as an assignee.
- A non-federal lender or guaranty agency is a proper defendant if the loan was federally reinsured or financed.
- Student loans present some of the same problems as mortgage loans, as many have been syndicated.

b. Check prior litigation.

- Issue preclusion
- Claim preclusion

c. Consider affirmative defenses

d. Pleadings special matters

- Fraud and misrepresentation
 - BR 7009 incorporates FRCP 9. Most common among these would be (b) alleging fraud or mistake. These allegations must be stated with particularity. “Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.” FRCP 9(b).

e. Set client expectations.

- Adversary proceedings are litigation, and litigation is expensive. Establish timelines and budgets.

f. Anticipate problems.

- Statute of limitations
 - Dischargeability
 - Revocation
 - Preference received
- Counterclaims
- 11 U.S.C. § 523(d)
- Consumer debts challenged under § 523(a)(2), if unsuccessful, shall result in judgment in favor of the debtor for costs and attorney fees if the creditor's position was not substantially justified. See *First National Bank of Omaha v. Sysouvanh*, 11-CV-675-wmc (W.D. Wis. 2013).
- Evaluate possibility of abstention. See 28 U.S.C. § 1334(c).

g. Jurisdiction.

- District court has jurisdiction over adversary proceedings. 28 U.S.C. § 1334(b).
- Bankruptcy court may hear adversary proceedings pursuant to procedures under 28 U.S.C. § 157(a) and (b). District courts have issued orders of reference.
- 28 U.S.C. § 157 describes and defines core proceedings.

h. Venue.

- Generally where the bankruptcy case is pending. But see 28 U.S.C. § 1408-1414.

i. Burden of proof.

- Usually a preponderance of the evidence. See *Grogan v. Garner*, 498 U.S. 279, 11 S.Ct. 654, 112 L.Ed. 2d 755 (1991).
- BR 4005 – objection to discharge

6. Drafting the Complaint.

a. Caption. See BR 7010.

b. Pleading generally. FRCP 8 applies to adversary proceedings. Pleadings must contain the following:

- Reference the underlying bankruptcy case.

- Designate the case as core or non-core – BR 7008(a).
- Plead jurisdiction.
- Short and plain statement of grounds for jurisdiction
 - Must include reference to name, number, and chapter of the case to which the adversary proceeding relates, and to the district and division where the underlying case is pending.
- Short and plain statement of claims
- Demand for relief, which may be in the alternative.
- Request for attorney fees must be pleaded as a claim. BR 7008(b).
- Claims must be stated in numbered paragraphs, with each paragraph limited as far as practicable to a single set of circumstances.
- To promote clarity, separate counts may and should be used.
- Caption should include the court's name, a title, file number, and be designated as a complaint.
- The title of the complaint must name all parties. BR 7010, applying FRCP 10(a).

7. Filing the complaint

- Filed with the clerk;
 - Complaint
 - Cover sheet (Form B104)
 - Summons (Form B250A)
 - Electronically issued by the Court and put on docket
 - Notice of pre-trial conference (Form B250B)
 - Pay the filing fee (\$350)

SERVING THE SUMMONS AND COMPLAINT

I. The Summons

- a.** Electronically issued by the Court and posted to the Docket
- b.** Blank certificate of service is issued with the summons that should be filled out and e-filed, indicating which parties were served and how they were served

II. Serving the Complaint by First Class Mail

- a.** Rule 7004 governs how service must be effected on:

i. An Individual

- 1.** (b)(1): Service on an individual is accomplished by mailing a copy of the summons and complaint to the individual via first class mail postage prepaid

- a. Note:** It is also sufficient to mail a copy of the summons and complaint to the entity upon whom process is prescribed to be served by any statute of the United States or by the law of the state in which service is made when an action is brought against such a defendant in the court of general jurisdiction for that state. **(7004(b)(7))**

ii. An infant or incompetent person

- 1.** (b)(2): Service on an infant or incompetent person is accomplished by mailing a copy of the summons and complaint to the person upon whom process is normally served when an action is brought against such a defendant in the courts of general jurisdiction of that state.

iii. A corporation, partnership, or unincorporated association

- 1.** (b)(3): Service on a corporation, partnership or unincorporated association is accomplished by mailing a copy of the summons and complaint via first class mail postage prepaid to the attention of an officer, a managing or general agent, or to any agent authorized by appointment or by law to receive service of process.

- a.** If the agent is authorized by statute to receive service and the statute so requires, a copy must also be mailed to the defendant via first class mail postage prepaid.

- b.** You can search the Wisconsin Department of Financial Institutions website, www.wdfi.org, to find active businesses along with authorized agents.

- 2. Note:** It is also sufficient to mail a copy of the summons and complaint to the entity upon whom process is prescribed to be served by any statute of the United States or by the law of the state in which service is made when an action is brought against such a

defendant in the court of general jurisdiction for that state. *See 7004(b)(7)*

iv. Upon the United States

1. (b)(4): Service on the United States is accomplished by mailing a copy of the summons and complaint addressed to
 - a. The office of the United States attorney for the district in which the action is brought **AND**
 - b. The Attorney General of the United at Washington, District of Columbia
 - c. **Note:** In an action attacking the validity of an order of an officer or agency of the United States not made a party, the summons and complaint must also be mailed to that officer or agency
2. The Court shall allow a reasonable time for service under (b)(4) if you have failed to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States *as long as* the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States

v. Upon any officer or agency of the United States

1. (b)(5): Service on any officer or agency of the United States is accomplished by mailing a copy of the summons and complaint to the United States as prescribed in (b)(4) **and also** to the officer or agency
2. If the agency is a corporation, the mailing should follow the procedure outlined in (b)(3)
3. The Court shall allow a reasonable time for service if you have failed to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States *as long as* the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States

vi. Upon a State or Municipal Corporation or Other Governmental Organization

1. (b)(6): Service on a state or municipal corporation or other governmental organization is accomplished by mailing a copy of the summons and complaint to the person or office that normally accepts service when an action is brought against them in the courts of general jurisdiction of that state

2. If state law does not specifically designate a person, then service is accomplished by mailing a copy of the summons and complaint to the chief executive officer of that state, municipal corporation, or other governmental organization.

vii. Upon the Debtor

1. (b)(9): Service on the debtor is accomplished by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or to such other address as the debtor designates in a filed writing (i.e. Change of Address).
2. If the debtor is represented by an attorney, the attorney must also receive a copy. **(Rule 7004(g)).**

viii. Upon any Defendant

1. (b)(8): It is also sufficient if a copy of the summons and complaint is mailed to an agent of the defendant authorized by appointment or by law to receive service of process
 - a. At the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on an business or profession and, if the authorization requires,
 - b. By also mailing a copy of the summons and complaint to the defendant.

ix. Upon the United States Trustee

1. (b)(10): Service on the United States Trustee is accomplished by Mailing a copy of the summons and complaint to an office of the United States trustee in the district where the case under the Code is pending

x. Upon an Insured Depository Institution

1. Rule 7004(h): Service on an insured depository institution is accomplished by mailing a copy of the summons and complaint via **certified mail addressed to an officer of the institution.**
 - a. **Exceptions:**
 - i. If the bank has appeared by counsel, service may be made on the counsel by first class mail.
 - ii. The court has ordered otherwise (i.e. service permitted by first class mail sent to an officer)
 - iii. The institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service

- b. **Note:** You can determine whether an institution is an insured depository institution by searching at <http://research.fdic.gov/bankfind/>

III. Serving the Complaint by Publication

- a. If a party to an adversary proceeding to determine or protect rights in property in the custody of the court cannot be served as provided in Rule 4(e)-(j) F.R.Civ.P. or Rule 7004(b), the court may order the summons and complaint to be served by mailing copies by first class mail, postage prepaid, to the party's last known address, and by at least one publication in such manner and form as the court may direct. **(Rule 7004(c)).**

IV. Nationwide Service of Process

- a. The summons and complaint and all other process *except a subpoena* may be served anywhere in the United States. **(Rule 7004(d)).**

V. Time Limits

- a. Service shall be by delivery of the summons and complaint within 7 days after the summons is issued
- b. If service is by any authorized form of mail, the summons and complaint needs to be deposited in the mail within 7 days after the summons is issued
- c. If the summons is not timely delivered or mailed, another summons shall be issued and served. **(Rule 7004(e)).**

VI. Personal Jurisdiction Established

- a. As long as exercise of jurisdiction is consistent with the Constitution and other laws of the United States, personal jurisdiction - with respect to a case under the code or a civil proceeding arising under the Code, or arising in or related to a case under the Code - is established by serving a summons or filing a waiver of service in accordance with Rule 7004 or Rule 4 F.R.Civ.P.

APPENDIX – EXHIBITS

Document	Number of Pages
Sample Complaint	3
Adversary Cover Sheet	2
Summons and Certificate of Service	2
Adversary Proceeding Required Documents and Fees	1
Corporate Ownership Statement	1
Western District of Wisconsin - Court information regarding Adversary Proceedings	1
Appearance of Child Support Creditor or Representative	1
Directory of Websites	1

Corporate Ownership Statement - - Shall be used whenever a corporate entity is a party to an adversary proceeding (FRBP 7007.1)

Appearance of Child Support Creditor or Representative (Form 2810) – for appearances involving said parties in adversary

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

In re the Matter:

JANE HOMEOWNER,

Debtor.

Bankruptcy Case No. 16-XXXXX

JANE HOMEOWNER,

Plaintiff,

v.

Adversary Proceeding No. 16-

Mortgage Electronic Registration Systems, Inc.
("MERS"), solely as nominee for
Lou Jones Breakfast Club Trust No. 2016-EDWI

Defendant.

COMPLAINT

Plaintiff, JANE HOMEOWNER ("Homeowner"), by her attorneys, Krekeler Strother, S.C., complains against the above-named Defendant, Mortgage Electronic Registration Systems, Inc. ("MERS") and files this action for lien avoidance pursuant to 11 U.S.C. § 1322(b)(2), alleging to the best of her knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the following:

INTRODUCTION

Nature of the Action

1. This lawsuit arises from Defendant holding a purported lien despite the fact that there is no equity for this lien to attach.
2. Causes of Action herein are brought against Defendant under the United States Bankruptcy Code, ("Bankruptcy Code"), 11 U.S.C. §1322(b)(2), to avoid the lien held by Defendant.

Jurisdiction and Venue

3. Pursuant to Bankruptcy Rule 7008 this adversary proceeding relates to In re JANE HOMEOWNER, a Chapter 13 case in the Bankruptcy Court of the Western District of Wisconsin. The related case number is 16-XXXXX. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(K). This proceeding relates to 11 U.S.C. §1322(b)(2).
4. Bankruptcy Rule 7001(2) requires an action of this nature to be filed as an adversary proceeding.
5. Homeowner filed her petition for relief under Chapter 13 of the Bankruptcy Code on January XX, 2016. This Court has jurisdiction over this adversary proceeding under 28 U.S.C. § 157, 28 U.S.C. § 1334 and 28 U.S.C. §1367.
6. Homeowner expressly consents to jurisdiction of the bankruptcy court to adjudicate this matter,

Parties

7. Plaintiff JANE HOMEOWNER is an individual who currently resides at 120 North Henry Street, Madison, WI 53703.
8. Defendant MERS is a mysterious entity with an address of PO Box 2026, Flint, MI 48501-2026. It is not an FDIC-insured depository institution.

Factual Allegations

9. Homeowner owns a personal residence located at 120 North Henry Street, Madison WI 53703 (the "subject property").
10. The value of the subject property is \$145,000, according to an August 2011 market analysis performed by The Dee McGarity Appraisal Co., LLC
11. MERS holds a second mortgage lien (the "lien") on the subject property in the amount of \$50,000. As of the date of the filing of the complaint, MERS has not filed a proof of claim in the underlying bankruptcy, and neither has any other party.
12. Defendant MERS lien is subordinate to a \$145,000 first mortgage lien held by Honest Mortgage Company. Honest Mortgage Company has not filed a proof of claim on the senior mortgage debt

as of the date of this filing. The amount listed above is based off of the plaintiff's best guess.

FIRST CAUSE OF ACTION: LIEN AVOIDANCE

13. Homeowner restates all of the above allegations as if repeated here.
14. Pursuant to 11 U.S.C §1322b(2), the plan may “modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor’s principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims.”
15. Homeowner moves the court to hold that MERS lacks a secured claim here due to the lack of equity to which the lien can attach.

WHEREFORE, the Plaintiff, JANE HOMEOWNER, respectfully requests the following relief:

1. A determination that MERS holds an unsecured claim for the second mortgage and does not hold lien rights to Homeowner’s homestead real estate for said mortgage;
2. An order stripping the second mortgage held by MERS upon completion of the Debtor’s Chapter 13 plan;
3. Reasonable attorney fees and legal expenses of the action.

Respectfully submitted this ____ day of _____ 2016.

KREKELER STROTHER, S.C.

By: _____
Simple Attorney
State Bar No.
Attorneys for Plaintiff, JANE HOMEOWNER

ADDRESS:
2901 West Beltline Hwy, Suite 301
Madison, WI 53713
(608) 258-8555
(608) 663-0287--Fax

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS		DEFENDANTS
ATTORNEYS (Firm Name, Address, and Telephone No.)		ATTORNEYS (If Known)
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee		PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)		FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
<input type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23
<input type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$
Other Relief Sought		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR	BANKRUPTCY CASE NO.	
DISTRICT IN WHICH CASE IS PENDING	DIVISION OFFICE	NAME OF JUDGE
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
DATE	PRINT NAME OF ATTORNEY (OR PLAINTIFF)	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

United States Bankruptcy Court

District Of _____

In re _____ ,
Debtor

Case No. _____

Chapter _____

Plaintiff

v.

Adv. Proc. No. _____

Defendant

SUMMONS IN AN ADVERSARY PROCEEDING

YOU ARE SUMMONED and required to file a motion or answer to the complaint which is attached to this summons with the clerk of the bankruptcy court within 30 days after the date of issuance of this summons, except that the United States and its offices and agencies shall file a motion or answer to the complaint within 35 days.

Address of the clerk:

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

Name and Address of Plaintiff's Attorney:

If you make a motion, your time to answer is governed by Fed. R. Bankr. P. 7012.

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

(Clerk of the Bankruptcy Court)

Date: _____

By: _____ (Deputy Clerk)

CERTIFICATE OF SERVICE

I, _____ (name), certify that service of this summons and a copy of the complaint was made _____ (date) by:

- Mail service: Regular, first class United States mail, postage fully pre-paid, addressed to:

- Personal Service: By leaving the process with the defendant or with an officer or agent of defendant at:

- Residence Service: By leaving the process with the following adult at:

- Certified Mail Service on an Insured Depository Institution: By sending the process by certified mail addressed to the following officer of the defendant at:

- Publication: The defendant was served as follows: [Describe briefly]

- State Law: The defendant was served pursuant to the laws of the State of _____, as follows: [Describe briefly]

If service was made by personal service, by residence service, or pursuant to state law, I further certify that I am, and at all times during the service of process was, not less than 18 years of age and not a party to the matter concerning which service of process was made.

Under penalty of perjury, I declare that the foregoing is true and correct.

Date _____

Signature _____

Print Name :

Business Address:

Adversary Proceeding

Required Documents and Fees	Minimum Filing Requirements	Official Form Number
Complaint	X	
Filing Fee: \$350.00 ¹	X	or, 2810
Adversary Proceeding Cover Sheet ²	X	1040
Corporate Ownership Statement, if applicable ³	X	

¹ Fee not due if the Adversary Proceeding is commenced by the Debtor.

¹ Fee not due if the commenced by the United States, including the U.S. Trustee.

¹ Fee not due if commenced by a Child Support Creditor who filed **Form 2810**.

¹ Fee may be deferred by the Trustee and Debtors in Possession and paid by the estate

² Conventional filers only.

³ Required by any corporation that is a party to an adversary proceeding.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

In re

Debtor

Case No.

Plaintiff

Adversary Case No.

v.

Defendant

Corporate Ownership Statement

Pursuant to Fed. R. Bankr. P. 7007.1 and to enable the Judge to evaluate possible disqualification or recusal, the corporate party states that:

- the following corporations, other than the Debtor or a governmental unit, directly or indirectly own 10% or more of any class of the corporate party's equity interests:

OR

- there are no such entities to report.

I,

, of

declare under penalty of perjury that I have read the foregoing statement and that it is true and correct to the best of my information and belief.

Dated:

By:

Printed Name and Title

Print Form

Adversary Proceedings

An Adversary Proceeding is a lawsuit arising in or related to a bankruptcy case. It is commenced by filing a complaint with the Court.

Required Documents:

Complaint

Adversary Cover Sheet (not required when case is filed electronically)

\$350 Filing fee unless plaintiff is:

- Trustee (in all chapters)
- Chapter 7, 12, or 13 debtor
- Chapter 11 debtor who does not have a confirmed plan

Number of Copies:

Paper filer: Original + appropriate number of copies as needed for service on defendant(s) and filer/plaintiff's file

Pursuant to Rule 7004(e), the Summons, Complaint, and Preliminary Pretrial Order must be served within 7 days from the date the Summons is issued. Proof of Service is required to be filed with the Court.

United States Bankruptcy Court

_____ District Of _____

In re _____,
Debtor(s)

Case No. _____

APPEARANCE OF CHILD SUPPORT CREDITOR* OR REPRESENTATIVE

I certify under penalty of perjury that I am a child support creditor* of the above-named debtor, or the authorized representative of such child support creditor, with respect to the child support obligation which is set out below.

Name:
Organization:
Address:

Telephone Number:

_____ X _____
Date Child Support Creditor* or Authorized Representative

<u>Summary of Child Support Obligation</u>	
Amount in arrears: \$ _____	If Child Support has been assigned: Amount of Support which is owed under assignments: \$ _____
Amount currently due per week or per month: on a continuing basis: \$ _____ (per week) (per month)	Amount owed primary child support creditor (balance not assigned): \$ _____
Attach an itemized statement of account. Do not disclose the name of a minor child. See 11 U.S.C. § 112. If a social security number or a taxpayer identification number is included, set out only the last four digits of the number. Judicial Conference Privacy Policy (09/01).	

* Child support creditor includes both creditor to whom the debtor has a primary obligation to pay child support as well as any entity to whom such support has been assigned, if pursuant to Section 402(a)(26) of the Social Security Act or if such debt has been assigned to the Federal Government or to any State or political subdivision of a State.

DIRECTORY OF WEBSITES

EASTERN DISTRICT

Local Rules - <http://www.wieb.uscourts.gov/index.php/orders-rules/rules/local-rules16>

Procedures for Chief Judge Susan V. Kelley -
<http://www.wieb.uscourts.gov/index.php/judges/svk/procedures8?id=176>

includes a very helpful primer on service of the adversary complaint, which can be used in conjunction with the Lou Jones Breakfast Club materials

Procedures for Judge Halfenger - <http://www.wieb.uscourts.gov/index.php/judges/judge-halfenger/procedures>

Procedures for Judge Hanan - <http://www.wieb.uscourts.gov/index.php/judges/beh/beh-pro>
See Page 6, Section XV, Service of motions in contested matters

WESTERN DISTRICT

www.wiwb.uscourts.gov – main website of the Bankruptcy Court

http://www.wiwd.uscourts.gov/wiwb/webhelp/ecf_atty_manual.htm - ECF User's Manual, with special section on bankruptcies, including Filing Requirements