

Chapter 1 : What is an Adversary Proceeding in Bankruptcy? : StudentLoanBankruptcy

The sample has been revised and updated in December and includes a memorandum of points and authorities, a sample declaration, and a proof of service. The author is a freelance paralegal with over 20 years of experience in California and Federal litigation and has used this sample for many years.

Generally, litigation has a well-earned reputation as time-consuming, disruptive to business and, of course, costly. Trying to impose the common litigation model, an often-times cumbersome dispute resolution paradigm, into the bankruptcy courts is analogous to trying to drive on the freeway in a car that only has one gear: It can work, but not well. When certain litigation procedures are modified, however, litigation in the bankruptcy courts can provide meaningful avenues for effective and efficient relief. Many of these avenues are buried in local bankruptcy rules. In order to effectively apply these expedited avenues to relief and recovery requires one essential ingredient: Contested Matters – Expedited Relief Contested matters are designed to be the most efficient form of litigation. Litigation outside of bankruptcy typically requires a party to file a complaint, litigate to a judgment and then execute on that judgment in order to get paid. That process is designed to take a number of months, if not years, to conclude. In bankruptcy, parties can bring a motion and obtain relief and oftentimes even get paid within weeks. Section of the Bankruptcy Code [3] clarifies the notice requirement in bankruptcy cases. If deemed appropriate, the phrase can therefore mean no notice and no hearing. The CD CA does not allow the use of negative notice for a number of matters, including: As a result, the discovery rules and discovery battles available in general federal litigation are for the most part also available in litigation in the bankruptcy courts. Those rules and battles could delay or, indeed, prevent the expeditious delivery of dispute resolution. For most, the discovery rules and carve-outs from adversary proceedings do not materially affect – or slow down – contested matters because: Continued hearings for evidentiary or legal support are generally uncommon and do not unduly lengthen the time period for relief. Some provisions of the Bankruptcy Code even require expedited hearings. In bankruptcy court, the prevailing party is frequently asked to draft the form of order. This can give counsel a chance to help defend, in advance, the order from attack on appeal either direct or collateral. Ex Parte, Emergency and Shortened-Time Motions Practitioners looking for the fastest relief often consider a stipulation or motion to shorten notice, either on an emergency or ex parte basis. Emergency motions often require both notice and a hearing. They are usually reserved for true emergencies and frequently include motions to avoid some immediate and irreparable harm. As a result, the rules applicable to adversary proceedings are inbred with time frames that can substantially delay resolution of the dispute. In an adversary proceeding, everything slows down. If a complaint is filed and the related summons were issued on January 1, under Rule , the answer, without extension, would be due on January If the answer were filed on that date, under Rule , the complaint can still be amended until February 21 and then the defendant can amend the answer until March 6. If the defendant includes a counterclaim in the amendment, then the plaintiff has until March 27 to respond. For example, personal service of the complaint and summons on defendants is not required. All discovery methods available in federal district court are also available in adversary proceedings. Rule 26 f provides an important tool for managing discovery disputes. Under Rule 26 f , the parties are to confer to consider the nature and basis of the claims, the possibilities for promptly settling or resolving the adversary proceeding, and to develop a proposed discovery plan. The disclosure procedure is deemed so critical that they must be certified by counsel, and sanctions are specifically authorized under Rule g 3. Parties have 30 days within which to respond to interrogatories, [24] document production, [25] and requests for admission. A hearing to address any discovery issues that arise at the end of discovery should also be considered. The primary vehicle for closely monitoring and pushing adversary proceedings is through regular status conferences. An often overlooked – and very effective tool – for handling delivery deadlines and other problems with opposing counsel is to file a motion requesting a status conference under Rule 26 f and have the court step in to encourage timely disclosure and cooperation. Moreover, some courts will push the parties into mediation shortly after the initial status conference to try to resolve lingering disputes. Summary With planning, litigation in the bankruptcy courts can be cost-effective

and provide the parties with an opportunity to resolve factual and legal issues with expedition. Under certain circumstances, relief is available within 21 days of filing a motion. Even in an adversary proceeding, with planning, bankruptcy can provide an effective forum for efficient relief. Practitioners should understand the policies undergirding bankruptcy, as well as the governing rules and statutes to more effectively speed the process along. Through negative notice, practitioners can effectively reduce expenses and risks for their clients. Courts have upheld the constitutionality of serving summons and complaints by mail in bankruptcy proceedings. See *In re Cossio, B*. Failure to follow these requirements may result in sanctions and dismissal.

Chapter 2 : Memorandum In Support Of Motion For Summary Judgment | JM | Department of Justice

This sample answer to adversary complaint is for use by a defendant in an adversary proceeding in United States Bankruptcy Court. Sample Points and Authorities in.

The court may set any matter for hearing whether or not a hearing is required by statute or rule. Live testimony will not be presented at the first date set for hearing, unless for good cause found by the court in advance of the hearing or otherwise so ordered. The judge may order a further hearing at which oral evidence and exhibits will be received, or may, as appropriate, order that all evidence be presented by affidavit or declaration. A The date, time, and place of the hearing; B A brief description of the relief sought; C A statement of the time for filing and serving objections or oppositions in accordance with LR d ; and, D This statement: You must also serve your written response on the person who sent you this notice. If you do not file a written response with the court, or if you do not serve your written response on the person who sent you this notice, then: The court may refuse to allow you to speak at the scheduled hearing; and, The court may rule against you without formally calling the matter at the hearing. E If a hearing has been set by an order shortening time, service of the motion and the order shortening time will constitute notice of the hearing. F The notice of hearing must be filed as a separate document from the associated motion or application. A The proof of service must show the date and manner of service and the name of the person served. Proof of service may be by written acknowledgment of service or certificate of the person who made service. The court may decline to take action on any papers until proper proof of service is filed. The notice and accompanying proof of service must be filed not more than seven 7 days after the motion is filed. B Failure to make the proof of service required by this rule does not affect the validity of the service. Unless material prejudice would result, the court may at any time allow the proof of service to be amended or supplied. See LR and LR If factual issues are contested, the court will not grant the contested relief unless admissible evidence is offered in support of the relief requested. Affidavits and declarations must be made under penalty of perjury and must: A Identify the affiant or declarant, the party on whose behalf the affidavit or declaration is submitted, and the motion to which is pertains; B Contain only nonhearsay factual evidentiary matter or expert opinion, conform as far as possible to the requirements of Fed. C Identify and authenticate documents and exhibits offered in support of the motion or opposition, unless the documents are already authenticated in the record or have been previously admitted into evidence by the court and are specifically referred to and identified in the motion or opposition; and, D If an appraisal, include a statement of the qualifications of the appraiser, and either be made under penalty of perjury or be included by reference into an affidavit or declaration of the appraiser. The opposition must set forth all relevant facts and any relevant legal authority. An opposition must be supported by affidavits or declarations that conform to the provisions of subsection c of this rule. A Motions for summary judgment brought in any adversary proceeding; B Motions for which an order shortening the time for the hearing date has been obtained; and, C Motions or contested matters for which the court has set a separate briefing schedule either in open court or by separate order. Reply briefs and points and authorities are limited to fifteen 15 pages, excluding exhibits. Where the court enters an order permitting a longer brief or points and authorities, the papers must include a table of contents and table of authorities. The party submitting the stipulation must submit a separate order approving the stipulation for consideration by the court, except that a proposed stipulation and order to substitute an attorney under LR b may be presented in one document. Any notice of continuance of hearing must contain the previous hearing date and time and the new date and time. Any notice vacating hearing must contain the vacated date and time. In chapter 7 and 13 cases, LR b 1 is waived if a proposed order is served with the motion and the motion is granted. If the proposed order is not served the motion, or if the order has been modified by the court or otherwise, then LR b 1 is applicable.

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adversary proceedings on path for a trial, and in which Judge Zurzolo sets a date for a pretrial conference, Judge Zurzolo will order parties to prepare and file a pretrial stipulation.

A motion for a new trial in United States Bankruptcy Court is filed under Federal Rule of Civil Procedure Rule 59 a and Federal Rule of Bankruptcy Procedure which authorize the filing of a motion for a new trial on some or all of the issues. Deadline to file a motion for a new trial in United States Bankruptcy Court. A motion for a new trial in United States Bankruptcy Court can be only be filed on certain grounds and must be filed within 14 calendar days after the judgment is entered. However if the stakes are high enough filing a motion for new trial can be very useful. Grounds for a motion for a new trial in United States Bankruptcy Court The main grounds for a motion for a new trial in United States Bankruptcy Court after a jury trial are 1 the verdict is against the weight of the evidence; 2 newly discovered evidence: The court may, on motion, grant a new trial on all or some of the issues”and to any party”as follows: A after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court; or B after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court. After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment. A motion for a new trial must be filed no later than 28 days after the entry of judgment. A motion for a new trial or to alter or amend a judgment shall be filed, and a court may on its own order a new trial, no later than 14 days after entry of judgment. For example a party requesting a new trial on the grounds that the verdict is against the weight of the evidence has the burden of convincing the judge that the verdict is against the clear weight of the evidence or is based on evidence which is false or will result in a miscarriage of justice. The party filing a motion for a new trial in United States Bankruptcy Court on the grounds of newly discovered evidence must show that the evidence in question was discovered after the date of the trial; that the moving party exercised due diligence to discover the evidence before the end of the trial; the evidence is material and not merely cumulative or impeaching; and the new evidence would likely have changed the outcome of the case. A party requesting a new trial in United States Bankruptcy Court on the grounds of prejudicial conduct by the judge or opposing counsel must show that they were so severely prejudiced that they were prevented from having a fair trial. For example it is improper for a judgment to comment on any ultimate factual issues such as the issue of which party was negligent, which party breached the contract, etc. And a new trial can be ordered in cases where the opposing counsel committed misconduct at the trial that made it reasonably certain that the verdict was influence by the prejudicial statements. An opening or closing statement incorrectly expands any potential grounds of liability or takes away any benefit the aggrieved party may have won a prior motion such as a motion for partial summary judgment, violating an in limine order or the Federal Rules of Evidence. The party requesting a new trial on the grounds of juror misconduct must show that the juror misconduct resulted in them suffering prejudice which could include extraneous information obtained by a juror from friends or relatives or a juror introducing facts or evidence acquired outside of the courtroom during jury deliberations. Sample motion for a new trial in United States Bankruptcy Court for sale. Attorneys or parties that would like to view a portion of a 16 page sample motion for new trial in United States Bankruptcy Court containing brief instructions, a memorandum of points and authorities with citations to case law and statutory authority, sample declaration and proof of service by mail sold by the author can see below. View this document on Scribd The author of this blog post, Stan Burman, is an entrepreneur and freelance paralegal that has worked in California and Federal litigation since and has created over sample legal documents for California and Federal litigation. If you are in need of assistance with any California or Federal litigation matters, Mr. Burman is available on a freelance basis. Burman may be contacted by e-mail at DivParalgl yahoo. He accepts payments through PayPal which means that you can pay using most credit or debit cards. You can, as long as you include this blurb with it: You can receive 10 free gifts just for subscribing. Follow Stan Burman on Twitter at: You can view sample legal document packages

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Chapter 4 : Litigation in the Courts: Getting the Square Peg into the Round Hole - Buchalter Law Firm

This sample opposition to a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure was used in an adversary proceeding but can be modified and used in any civil litigation in a Bankruptcy or District Court in ANY state within the jurisdiction of the Ninth Circuit Court of Appeals.

Rule Service on Foreign Parties. Deadlines included in such documents shall allow ample time for the foreign party to respond accordingly after service by mail Rule Summons and Notice of Pretrial Conference in an Adversary Proceeding. A party or attorney filing a complaint or third-party complaint shall prepare a Summons and Notice of Pretrial Conference in an Adversary Proceeding Local Form. The pretrial conference date shall be a date that is at least thirty-five (35) days from the date of service of the summons and complaint and set in accordance with Local Rule a and b below. The completed summons and certificate of service shall be filed in the adversary proceeding. The party or attorney filing the complaint or third-party complaint shall be responsible for serving the summons and complaint. Chapter 7, Chapter 12 and Chapter 13 Cases. When Required and Schedule. Briefing and Affidavit Schedule. A party filing a motion in an adversary proceeding except for a discovery-related motion which shall be governed by Local Rule b shall not file a notice of said motion. Unless otherwise ordered by the Court or agreed by the parties, the briefing and affidavit schedule for presentation of all motions in adversary proceedings except for discovery-related motions which shall be governed by Local Rule b shall be as follows: The opening brief and accompanying affidavits shall be served and filed on the date of the filing of the motion; The answering brief and accompanying affidavits shall be served and filed no later than fourteen (14) days after service and filing of the opening brief; and The reply brief and accompanying affidavits shall be served and filed no later than seven (7) days after service and filing of the answering brief. An appendix may be filed with any brief. Any party may waive its right to file a brief in a filed pleading or in a separate notice filed with the Court. Citation of Subsequent Authorities. This rule applies only to non-discovery related motions in adversary proceedings. The front cover of each brief and appendix shall contain the caption of the case, a title, the date of filing, the name and designation of the party for whom it is filed, and the name, number, address and telephone number of counsel by whom it is filed, including the bar identification number for Delaware attorneys. All pleadings must be double-spaced, in Courier New font or Times New Roman and in at least 12 point typeface. All briefs and appendices shall be firmly bound at the left margin. Page Numbering of Appendices. Pages of an appendix shall be numbered separately at the bottom. The page numbers of appendices associated with opening, answering and reply briefs, respectively, shall be preceded by a capital letter "A," "B" or "C. Without leave of Court, no opening or answering brief shall exceed forty (40) pages and no reply shall exceed twenty (20) pages, in each instance, exclusive of any tables of contents and citations. Citations will be deemed to be in acceptable form if made in accordance with "A Uniform System of Citation" published and distributed from time to time by the Harvard Law Review Association. State reporter citations may be omitted but citations to the National Reporter System must be included. United States Supreme Court decisions shall be to the official citation. Citation by Docket Number. If briefs are required, the following format shall apply: Opening and Answering Briefs. The opening and answering briefs shall contain the following under distinctive titles, in the listed order: A table of contents setting forth the page number of each section, including all headings, designated in the body of the brief; A table of citations of cases, statutes, rules, textbooks and other authorities, alphabetically arranged. If a brief does not contain any citations therein, a statement asserting this fact should be placed under this heading; A statement of the nature and stage of the proceeding; A summary of argument stating in separate numbered paragraphs the legal propositions upon which each side relies; A concise statement of facts, with supporting references to appendices or record, presenting succinctly the background of the questions involved. The statement shall include a concise statement of all facts that should be known in order to determine the points in controversy. The answering counter-statement of facts need not repeat facts recited in the opening brief; An argument divided under appropriate headings distinctly setting forth separate points; and A short conclusion stating the precise relief sought. The party filing the opening brief shall not reserve material for the reply brief.

that should have been included in a full and fair opening brief. There shall not be repetition of materials contained in the opening brief. A table of contents and a table of citations, as required by Local Rule b i A - B , shall be included in the reply brief. Each Appendix shall contain a paginated table of contents and may contain such parts of the record that are material to the questions presented as the party wishes the Court to read. Duplication shall be avoided. Portions of the record shall be arranged in chronological order. If testimony of witnesses is included, appropriate references to the pages of such testimony in the transcript shall be made and asterisks or other appropriate means shall be used to indicate omissions. Appendices may be separately bound. Parts of the record not included in the appendix may be relied on in briefs or oral argument. Whenever a document, paper or testimony in a foreign language is included in any appendix or is cited from the record in any brief, an English translation made under the authority of the Court, or agreed by the parties to be correct, shall be included in the appendix or in the record. Counsel may agree on a joint appendix that shall be bound separately.

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partial summary judgment - adversary proceeding no. dm Plaintiff and liquidating trustee Michael G. Kasolas ("Trustee") respectfully submits this Memorandum of Points and Authorities in support of the Trustee's Motion for Partial Summary.

Stan Burman Leave a comment A motion for summary judgment by a plaintiff in Bankruptcy Court is the topic of this blog post. P 56 a and Fed. Any party moving for summary judgment under Rule 56 must file the motion no later than 30 days after the close of all discovery in the case unless a different time is specified by a local rule or specific order of the Court. The moving party should give at least 31 calendar days notice of the motion unless a different time is specified by a local rule or specific order of the Judge hearing the case. The moving party should carefully review the local rules for their Court as well as standing orders for the Judge as many districts and even individual Judges have very specific rules and procedures that must be followed. One United States Bankruptcy Court that has very specific local rules is the Central District of California where local rules require that the moving party must meet and confer with the opposing party in an attempt to resolve any issues before any motion is filed and local rule has very specific requirements for the documents that must be included with the motion including a requirement that a Statement of Uncontroverted Facts and Conclusions of Law and proposed Judgment granting summary judgment must be served and filed with the motion. The United States Supreme Court has stated that the moving party on a Rule 56 motion for summary judgment has the burden of demonstrating that there is no genuine issue of fact in dispute that requires a trial. Once the moving party has met their burden the party opposing the motion cannot just rely on any denials in their pleadings but instead they must set forth specific facts showing a genuine issue of fact in dispute that requires trial. The Ninth Circuit Court of Appeals has stated that the opposing party cannot defeat a motion for summary judgment simply by relying on conclusory allegations that are not supported by any evidence. And they have also stated that an issue of fact alone is not sufficient reason to deny a motion for summary judgment unless there is a genuine issue of material fact that is capable of directly affecting the outcome of the case, and that the evidence must be substantial and not merely speculative. Sample motion for summary judgment by a plaintiff in Bankruptcy Court for sale. Attorneys or parties who would like to view a portion of a 20 page sample motion for summary judgment in United States Bankruptcy Court containing brief instructions, a table of contents and table of authorities as well as a memorandum of points and authorities with citations to case law and statutory authority, statement of uncontroverted facts and conclusions of law, sample declaration, proposed judgment granting summary judgment and proof of service by mail sold by the author can see below. View this document on Scribd The author of this blog post, Stan Burman, is a freelance paralegal who has worked in California and Federal litigation since and has created over sample legal documents for sale. For licensed attorneys and law firms that need assistance with any California or Federal litigation matters, Mr. Burman is available on a freelance basis. Burman may be contacted by e-mail at DivParagl yahoo. He accepts payments through PayPal which means that you can pay using most credit or debit cards. Do you want to use this article on your website, blog or e-zine? You can, as long as you include this blurb with it: You can receive 10 free gifts just for subscribing. Follow Stan Burman on Twitter at: Please note that the author of this blog post, Stan Burman is NOT an attorney and as such is unable to provide any specific legal advice. The author is NOT engaged in providing any legal, financial, or other professional services, and any information contained in this blog post is NOT intended to constitute legal advice. The materials and information contained in this blog post have been prepared by Stan Burman for informational purposes only and are not legal advice. Transmission of the information contained in this blog post is not intended to create, and receipt does not constitute, any business relationship between the author and any readers. Readers should not act upon this information without seeking professional counsel.

Chapter 6 : Motion Papers. | United States Bankruptcy Court

adversary proceeding, they must file points and authorities in support of their positions. Any party contending that the

court cannot enter a final judgment must file and serve a memorandum of points and authorities, along with evidence, in support of its position no.

Chapter 7 : The Adversary Proceeding Process (general overview) : StudentLoanBankruptcy

In an adversary proceeding, everything slows down. If a complaint is filed and the related summons were issued on January 1, under Rule , the answer, without extension, would be due on January

Chapter 8 : Local Rules | District of Delaware | United States Bankruptcy Court

The motion and the memorandum of points and authorities may be combined and docketed together. (3) The third document, the notice of hearing, shall be docketed separately and state the date, time, and location of the hearing (if any).