

6-29/105.00 Adversary Proceeding

Issues in bankruptcy may be adjudicated as an adversary proceeding or as a contested matter. Adversary proceedings are initiated by a complaint and resemble civil cases in the district court. ([FRBP 7001](#))

The following are adversary proceedings:

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, but not a proceeding under [Rule 3012](#) or [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 removed under [28 U.S.C. §1452](#).

An adversary proceeding is commenced by filing a complaint in the bankruptcy court. The clerk issues a summons directing the defendant to file a timely response to the complaint. ([FRBP 7004\(a\)](#); [FRCP 4\(b\)](#)) The summons and complaint must be served within 10 days of the issuance of the summons. If service is not effected timely, a new summons must be issued and served. ([FRBP 7004\(e\)](#)) The summons and complaint may be served anywhere in the United States by mail, personal delivery, residence service or publication. ([FRBP 7004\(b\),\(d\), \(c\)](#); [FRCP 4\(e\)-\(j\)](#)) Service by mail is complete upon mailing and not upon delivery. ([FRBP 9006\(e\)](#)) The defendant must serve an answer to the complaint or make a motion within 30 days after the issuance of the summons. ([FRBP 7012\(a\)](#)) The United States has 35 days to serve an answer or make a motion. ([FRBP 7012\(a\)](#))

An adversary proceeding may be adjudicated even if the bankruptcy has been closed. Correspondingly, an adversary proceeding may be reopened without reopening the bankruptcy case. A case may be reopened "to administer assets, to accord relief to the debtor, or for other cause." ([11 USC 350\(b\)](#)) Thus, if the litigation in the adversary proceeding does not involve the trustee or estate assets, the case does not have to be reopened.

An adversary proceeding is assigned a separate case number which is used in conjunction with the bankruptcy case number.
