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.