

## **CAPTION (CAPTION FOR USE IN ADVERSARY PROCEEDING OTHER THAN FOR A COMPLAINT FILED BY A DEBTOR)**

An adversary proceeding is the equivalent of a lawsuit within the bankruptcy case. A caption for an adversary proceeding contains both the caption for the overall bankruptcy case and an adaptation of a caption for a civil action (lawsuit) in which the parties are designated as “plaintiff” and “defendant.” Together, the complaint and the summons function as notice to the defendant of the filing of the adversary proceeding.

Section 342(c) of the Bankruptcy Code requires a debtor to provide the debtor’s address and the last four digits of the debtor’s taxpayer identification number on any notice sent by the debtor to a creditor. Because a complaint initiating an adversary proceeding serves as a notice to the defendant of the filing of the action, a debtor filing an adversary proceeding must follow the notice requirements of § 342(c). The additional information may be added to the caption.

The additional information must be included only when the debtor files an adversary proceeding. Official Form 16D should be used without the modification for all other documents in an adversary proceeding, including a complaint filed by any party other than the debtor.

### **I. APPLICABLE LAW AND RULES**

A party who wants to start an adversary proceeding must file a “complaint” with the clerk of the bankruptcy court explaining why the plaintiff (the person who files the adversary proceeding) is entitled to the money or other relief sought from the defendant (the person being sued). Federal Rule of Civil Procedure 3, incorporated by reference by Bankruptcy Rule 7003. The complaint shall contain a short and plain statement of the facts which entitle the plaintiff to relief. Fed. R. Civ. P. 8(a), incorporated by reference by Bankruptcy Rule 7008(a).

Bankruptcy Rule 7001 lists the kinds of actions for which an adversary proceeding is required. Bankruptcy Rule 7010 requires that all pleadings in an adversary proceeding “conform substantially to the appropriate Official Form.” Bankruptcy Rule 7004 requires a plaintiff to serve on each defendant a copy of the complaint along with the document called a summons.

Bankruptcy Procedural Forms B250A, B250B, B250C, B250D, and B250E are different versions of a summons. The forms and instructions for completing them are posted at [http://www.uscourts.gov/bkforms/bankruptcy\\_forms.html#procedure](http://www.uscourts.gov/bkforms/bankruptcy_forms.html#procedure).

### **II. DIRECTIONS**

1. After the words, “United States Bankruptcy Court,” the name of the federal judicial district in the which the particular bankruptcy court is located should be inserted. Some

districts include an entire state. Their names should be written as follows: "District of Utah." Other districts comprise only part of a state. Their names should be written as follows: "Eastern District of Tennessee."

2. Following the words "In re," the debtor's or the joint debtors' names should be inserted in the space provided. The debtor's or the joint debtors' names should be followed by the designation "Debtor" or "Debtors."

3. The case number should be stated in the space provided. The case number is assigned by the clerk's office when the petition is filed; it also appears on the section 341 notice mailed to creditors at the beginning of the case.

4. The chapter number to be inserted in the space provided is the chapter of the Bankruptcy Code under which the case is proceeding at the time the paper is filed. A bankruptcy case can be filed under one chapter, but converted to a different chapter later in the case. If a case has been converted, the court will have sent notice of that fact.

5. The name of the party filing the complaint should be inserted in the space provided, followed by the designation "Plaintiff."

6. The name(s) of the party or parties against whom the adversary proceeding is directed should be inserted in the space provided, followed by the designation "Defendant" or "Defendants."

7. The adversary proceeding number will be assigned by the clerk's office by the clerk's office when the adversary proceeding is filed.

8. The title "COMPLAINT" should appear in all capital letters. A brief description of the action being initiated by the complaint can be added. Descriptions of commonly filed complaints include "COMPLAINT OBJECTING TO THE DEBTOR'S DISCHARGE" and "COMPLAINT TO DETERMINE THE DISCHARGEABILITY OF A DEBT."

9. Some courts may have local requirements for additional information that must be provided as part of the caption. Stating the name of the judge to whom the case or matter is assigned and stating name and state bar number of the filing attorney (or the name of the filing party if the party is not represented by an attorney) are common requirements. Anyone planning to file a motion or other paper should review the bankruptcy court's local rules concerning requirements for captions. Links to local bankruptcy rules are posted at <http://www.uscourts.gov/rules/bk-localrules.html>.

10. Once the caption is complete, the text of the paper to be filed should begin.