

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

**GUIDANCE ON PROPER PROCEDURE
FOR DISPOSITION OF ADVERSARY PROCEEDINGS
[updated August 2014]**

Subject to the special requirements for actions seeking denial or revocation of discharge or proposed settlements involving a trustee, an adversary proceeding that does not go to trial or result in default judgment can be concluded in one of several ways:

Notice of Dismissal. Fed.R.Bankr.P. 7041 permits the plaintiff to withdraw a complaint, prior to a defendant's filing of an answer or motion for summary judgment, by filing a "notice of dismissal." The notice of dismissal concludes the adversary proceeding, with no further order from the Court. If a defendant has answered or moved for summary judgment, the plaintiff cannot use the notice of dismissal to terminate the adversary proceeding but instead must file either a stipulation of dismissal or a motion to dismiss. The plaintiff's motion to dismiss after defendant's answer or summary judgment request requires notice to the other parties in the adversary proceeding and a Court order granting the motion. See Fed.R.Civ.P.41(a)(2).

Stipulation of Dismissal. Fed.R.Bankr.P. 7041 also permits the parties to file a "stipulation of dismissal." This stipulation also concludes the adversary proceeding, with no further Court order. As such, a stipulation of dismissal should contain no conditions precedent or subsequent, as that would more properly be an "agreed consent to judgment." A "joint motion to dismiss" should be filed as a stipulation of dismissal. Again, if the stipulation of dismissal includes conditions precedent or subsequent, it should be filed as an agreed consent to judgment.

Consent to Judgment. It is presumed that the parties want any agreement resolving the adversary proceeding to have the same effect as a judgment. Fed.R.Bankr.P. 9021 requires that "every judgment entered in an adversary proceeding or contested matter shall be set forth on a separate document." Therefore, parties wishing to memorialize an agreement are directed to file a "consent to judgment" signed by the parties to the agreement. The document should not contain order or judgment language nor a place for the judge's signature. While the "judgment" may recite the terms of the parties' agreement, it should not include any findings by the Court, e.g., that the agreement is fair and equitable, was negotiated at arms' length, or is in the best interests of the parties. It also should not include any language indicating that the Court is retaining jurisdiction over the agreement or its enforcement.

A separate order entitled "judgment" should be submitted that approves the consent to judgment. See below for discussion of the additional requirements governing settlements of actions under § 727 or settlements with trustees.

Complaints to Deny or Revoke Discharge. Fed.R.Bankr.P. 7041 and S.D.Ind. L.R. B-7041-2 add special requirements for disposition of complaints to deny or revoke discharge under 11 U.S.C. §727. Any dismissal must be served on parties in accordance with the local rule. A notice of dismissal or stipulation of dismissal, if properly served in accordance with the local rule on the trustee, United States Trustee, and counsel of record in the bankruptcy case, will be held for twenty-one days. Parties receiving notice of the dismissal have an opportunity to object during that time. If no objection is filed, the adversary proceeding is closed. Any agreed consent to judgment (other than a settlement with the case trustee, which is discussed below) must also be properly served and the order approving same will not be entered until the twenty-one day objection period has passed.

Settlements with Trustees. Fed.R.Bankr.P. 9019 and S.D.Ind. L.R. B-9019-1 establish additional requirements for settlements with trustees or debtors-in-possession—which would include settlements of complaints to deny or revoke discharge. These requirements also apply to causes of action which are property of the estate but which are being pursued by an entity other than the trustee, such as a fraudulent conveyance action brought by the creditors' committee.

Notice and opportunity for hearing on such settlements are required. The proper procedure is to file a motion to compromise and settle in the legal case, not the adversary proceeding. That pleading should only have the legal caption, as the body of the motion should contain the adversary proceeding information. As required by S.D.Ind.L.R. 9019-1, one of the parties to the settlement shall give notice of the opportunity to object in the legal case, and shall file a certificate of service. If no objection is filed, or if any objection is overruled, the Court will grant the motion in the legal. At that point the parties in the adversary proceeding will file in the adversary proceeding a notice of dismissal, stipulation of dismissal, or agreed consent to judgment—whatever is appropriate under the circumstances - pursuant to Fed.R.Bankr.P. 7041.