

**INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 16 D
CAPTION FOR USE IN ADVERSARY PROCEEDING OTHER THAN
FOR A COMPLAINT FILED BY A DEBTOR**

I. INTRODUCTION

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 summons and complaint 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 additional information on any notice sent by the debtor to a creditor. Official Form 16C, which includes this additional information, is to be used when the party filing an adversary proceeding is the debtor. Instructions for completing Official Form 16C appear following that form. This form, Official Form 16D, should be used for all other documents in an adversary proceeding, including a complaint filed by any party other than the debtor.

II. 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). Rule 7003 of the Federal Rules of Bankruptcy Procedure (referred to as "Bankruptcy Rule" or "Fed. R. Bankr. P."), incorporating by reference Rule 3 of the Federal Rules of Civil Procedure. The complaint shall contain a short and plain statement of the facts which entitle the plaintiff to relief. Fed. R. Bankr. P. 7008(a), incorporating by reference Fed. R. Civ. P. 8(a).

Bankruptcy Rule 7001 lists the kinds of actions for which an adversary proceeding is required. Bankruptcy Rule 7010 directs the parties to use an official form of caption in an adversary proceeding. Bankruptcy Rule 7004 requires a plaintiff to serve on each defendant a copy of the complaint along with another document called a summons.

III. 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, and their names should be written as follows: "District of Utah." Other districts comprise only part of a state and 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.

3. The debtor's or the joint debtors' names should be followed by the designation "Debtor."

4. The case number should be stated in the space provided. The case number will be assigned by the clerk's office when the petition is filed; it also appears on the "Notice of Commencement of Case . . . Meeting of Creditors, and Fixing Dates" mailed to creditors at the beginning of the case.

5. 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.

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

7. 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."

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

9. The title "COMPLAINT" should appear in all capital letters. A brief description of the action being initiated by the complaint can be added. A description of a commonly filed complaint would be "COMPLAINT UNDER § 523(c) OF THE BANKRUPTCY CODE TO DETERMINE THE DISCHARGEABILITY OF A DEBT."

10. Some courts may have local requirements for additional information that must be provided as part of the caption. Some of the more frequent local requirements are to state the name of the judge to whom the case or matter is assigned and for an attorney to state the attorney's name and state bar number or other identification number. Anyone planning to file a motion or other paper in a bankruptcy case should check with the clerk's office at the bankruptcy court concerning local requirements.

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

12. Copies of the various forms of a summons and instructions for completing them can be found in Part II of this Manual.

**Form 16D. CAPTION FOR USE IN ADVERSARY PROCEEDING
OTHER THAN FOR A COMPLAINT FILED BY A DEBTOR**

COMMITTEE NOTE (1995)

This form of caption may be used in an adversary proceeding when section 342(c) of the Code, as added by the Bankruptcy Reform Act of 1994, is not applicable.