

JUDGE DANA L. RASURE'S
GUIDELINES FOR CONCLUDING AN ADVERSARY PROCEEDING

There are 3 ways to resolve an adversary proceeding to effect its closing:

1. **Dismissal** - resolves the legal action from a procedural perspective (Fed. R. Civ. P. 41 made applicable in adversary proceedings by Fed. R. Bankr. P. 7041).
 - A. Before service of a response – The plaintiff may dismiss an adversary proceeding without court order by filing a “Notice of Dismissal” at any time before the defendant responds. See Fed. R. Civ. P. 41(a)(1)(i). A form of “Notice of Dismissal” is attached. See Exhibit A.
 - B. After service of a response –
 - (i) The adversary proceeding may be dismissed upon the filing of an “Agreed Stipulation of Dismissal” signed by all parties who have appeared in the action. See Fed. R. Civ. P. 7041(a)(1)(ii). A form of “Agreed Stipulation of Dismissal” is attached. See Exhibit B.
 - (ii) Plaintiff may file a “Motion to Dismiss” to obtain an Order of Dismissal. See Fed. R. Civ. P. 41(a)(2). A form of “Motion to Dismiss” is attached. See Exhibit C.

A plaintiff may not dismiss a complaint objecting to a debtor’s discharge (§ 727 action) without notice to all parties in interest. A motion to dismiss the adversary proceeding should be prepared in accordance with Local Rule 9013-1(B) and served upon the trustee, United States Trustee, all creditors and any person who has requested notice. See Fed. R. Bankr. P. 7041; Local Rule 7041-1.

2. **Settlement** - an agreement between the parties that resolves the substance of the dispute.
 - A. Settlement agreement has not been fully performed (i.e. payments to plaintiff over a period of time):
 - (i) Parties may dismiss an adversary proceeding as set forth above, or they may submit an “Agreed Journal Entry of Judgment” and the court will immediately close the adversary proceeding. Enforcement of the settlement agreement must be sought in state court unless there is some independent basis for federal jurisdiction. See Kokkonen v. Guardian

Life Ins. Co. of Am., 511 U.S. 375 (1994).¹ The parties may agree to stay execution of the judgment pursuant to the terms of the settlement agreement. A form of “Agreed Journal Entry of Judgment” is attached. See Exhibit D.

- B. Upon full performance of a settlement agreement, the parties shall file an “Agreed Stipulation of Dismissal” signed by all parties who have appeared in the action.” See Fed. R. Civ. P. 41(a)(1)(ii). A form of “Agreed Stipulation of Dismissal” is attached. See Exhibit B.
3. **Judgment** - Final legal determination of disputed legal or factual issues that resolves legal rights from which an appeal can be taken. The adversary proceeding will be closed by the Court Clerk after 14 days from entry of the final Judgment unless the Judgment is appealed or there are other issues pending.

¹ Bankruptcy Rule 9019 provides that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). “If a proposed settlement or compromise of an adversary proceeding affects the estate, the parties shall file a joint motion for approval of such compromise in the adversary proceeding and in the bankruptcy case and serve the motion upon the debtor, debtor’s counsel, the trustee, the United States trustee, and parties who have requested notice in the case. A motion filed under this rule shall describe with specificity the contentions of the parties and the basis and terms of the settlement.” Local Rule 9019-1. “The Court, in its discretion, may set the motion for hearing notwithstanding compliance with the procedures of Local Rule 9013-1(B).” Id.

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA**

IN RE:

_____ ,

Debtor(s).

_____ ,

Plaintiff,

v.

_____ ,

Defendant.

Case No. _____ -R

Chapter _____

Adv. No. _____ -R

NOTICE OF DISMISSAL

Plaintiff _____ (the "Plaintiff") seeks to dismiss the above-referenced adversary proceeding pursuant to Federal Rule of Civil Procedure 41(a)(1)(i), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7041. Plaintiff filed the Complaint on _____, seeking [*describe relief sought*]. Defendant _____ has not filed a response pleading in this adversary proceeding. Accordingly, Plaintiff seeks dismissal without court order.

Dated this ____ day of _____, 20____.

Attorney Name, OBA # _____
[Address/Telephone/Fax/Email]
ATTORNEY FOR PLAINTIFF

EXHIBIT B

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA**

IN RE:

_____,
Debtor(s).

_____,
Plaintiff,

v.

_____,
Defendant.

**Case No. _____-R
Chapter _____**

Adv. No. _____-R

AGREED STIPULATION OF DISMISSAL

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7041, Plaintiff _____ and Defendant _____, being all parties who entered an appearance in the above-referenced adversary proceeding, hereby jointly and mutually stipulate to the dismissal of all claims asserted herein by virtue of any pleading entered or filed in this proceeding, [with/without] prejudice to refiling.

Dated this ____ day of _____, 20____.

Attorney Name, OBA # _____
[Address/Telephone/Fax/Email]
ATTORNEY FOR PLAINTIFF

Attorney Name, OBA # _____
[Address/Telephone/Fax/Email]
ATTORNEY FOR DEFENDANT

EXHIBIT C

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA**

IN RE:

_____,
Debtor(s).

_____,
Plaintiff,

v.
_____,
Defendant.

**Case No. _____-R
Chapter _____**

Adv. No. _____-R

MOTION TO DISMISS

On _____, Plaintiff _____ (the "Plaintiff") filed the Complaint to [describe nature of claims and the relief sought] pursuant to [insert relevant statutory authority or caselaw] (the "Complaint"). On _____, Defendant _____ (the "Defendant") filed the Answer to the Plaintiff's Complaint.

Pursuant to Federal Rule of Civil Procedure 41(a)(2), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7041, Plaintiff seeks to dismiss all claims set forth in the Complaint [describe reasons/basis for dismissal].

Dated this ____ day of _____, 20__.

Attorney Name, OBA # _____
[Address/Telephone/Fax/Email]
ATTORNEY FOR PLAINTIFF

EXHIBIT D

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA**

IN RE:

_____,
Debtor(s).

_____,
Plaintiff,

v.

_____,
Defendant.

**Case No. _____-R
Chapter _____**

Adv. No. _____-R

AGREED JOURNAL ENTRY OF JUDGMENT

Plaintiff _____ (the "Plaintiff") and Defendant _____ (the "Defendant") jointly and mutually agree that judgment shall be entered against the Defendant pursuant to [*insert statutory or other authority*].

Plaintiff and Defendant agree that [*describe terms of agreement between the parties*].

IT IS THEREFORE ORDERED that [*insert specific terms of the agreed judgment, e.g. amount of judgment, terms of repayment, interest calculation*] is granted [*in the amount of*] _____.

IT IS FURTHER ORDERED that [*if applicable, insert consequences of default under a payment plan, or other additional terms*].

SO ORDERED this ____ day of _____, 20____.

Bankruptcy Judge

Attorney Name, OBA # _____
[Address/Telephone/Fax/Email]
ATTORNEY FOR PLAINTIFF

Attorney Name, OBA # _____
[Address/Telephone/Fax/Email]
ATTORNEY FOR DEFENDANT