

Adversary Dismissals

Docketing Event

- Adversary > Motions/Applications > Motion to Dismiss Adversary Proceeding
 - Adversary > Motions/Applications > Motion to Dismiss Party
 - Adversary > Miscellaneous > Stipulation
 - Adversary > Notices > Notice of Dismissal of Adversary Proceeding
 - Adversary > Notices > Notices of Dismissal (voluntary)
 - Adversary > Notices > Notice of Stipulated Dismissal in an Adversary Proceeding
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Negative Notice: For motions to dismiss, negative notice procedures apply.

Accompanying Orders: N/A

Code and Rule References:

[Fed. R. Bankr. P. 7041](#)

[Fed. R. Civ. P. 41](#)

[Local Rule 2002-4](#)

[Local Rule 7001-1](#)

Fee: N/A

Applicable Chapters: 7, 11, 12, 13

Implemented: 4/13/2018

Last Revision: 4/13/2018 7:42:55 AM

Description

There are several ways to dismiss an adversary proceeding, a party, or counts in an adversary complaint.

Except for complaints objecting to discharge or seeking to revoke a discharge (“Section 727 Complaints”), a plaintiff may dismiss an adversary proceeding, specific counts in an adversary complaint, or a defendant without court order by filing a Notice of Dismissal before the opposing party serves an answer or other responsive pleading.

Except for Section 727 Complaints, an adversary proceeding, specific counts in an adversary complaint, or a defendant in an adversary proceeding may be dismissed without court order by filing a stipulation of dismissal signed by all parties who have appeared in the action.

When there is a counterclaim, cross-claim, or third party complaint, the filer may file a notice of dismissal of the counterclaim, cross-claim, or third party complaint if there is no answer or other responsive pleading. If there is an answer or any other responsive pleading filed, the parties may file a stipulation of dismissal. The stipulation of dismissal must be signed by the parties to the counterclaim, cross-claim, or third party complaint.

Section 727 Complaints shall not be dismissed at the plaintiff’s request without notice to the Trustee, United States Trustee, and all creditors. All interested parties in the bankruptcy case must have an opportunity to intervene as a substitute for the plaintiff. Section 727 Complaints may only be dismissed by a court order that contains the proper terms and conditions.

Filing Checklist

Review the Notice of Dismissal by Plaintiff or Stipulation of Dismissal to determine if it:

- Is properly signed; and
 - ❖ Note: if it is a Stipulation of Dismissal, all parties who filed an answer, motion for summary judgment, or other responsive pleading must sign the stipulation.
 - ❖ Note: if it is a Notice of Dismissal by Plaintiff and there is no answer, motion for summary judgment, or other responsive pleading, only the Plaintiff must sign.
- Includes the attorney's or attorneys' name(s) and address(es) complete and consistent with the name(s) and address(es) in CM/ECF.

Review the Motion to Dismiss (or Dismiss Party) to determine if it:

- Is signed;
- Includes the attorney's name and address complete and consistent with the filing attorney's name and address in CM/ECF; and
- Is properly served and includes a proper certificate of service;
- Is filed with negative notice that contains correct language located on the first page;
 - ❖ Response period is 14 days (plus an additional three days for service if any party was served by U.S. Mail).

Note for Section 727 Complaints: If a party files a Notice of Dismissal of a Section 727 Complaint, Stipulation of Dismissal of a Section 727 Complaint, or Motion to Dismiss a Section 727 Complaint, the Complaint may not be dismissed without notice to the Trustee, United States Trustee, all creditors, and other persons that the Court may direct. The Court will issue a Notice of Proposed Dismissal with 21 days negative notice to give parties a chance to substitute as plaintiff in the Section 727 Complaint. However, if a Motion to Dismiss is filed by the Defendant in a Section 727 Complaint, no additional Notice of Proposed Dismissal is required. Any Motion, Notice, Stipulation, or Response to Notice of Proposed Dismissal may be set for hearing.