



How to be Successful in Bankruptcy Court

provided by:

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Motion Practice

- Be sure to select the correct CM/ECF event when filing motions to ensure the motion is docketed correctly.
- Please respond to any notice of errors issued by the Clerk's Office by the deadline contained therein. When you fail to respond, the issue is sent to the judge assigned to the case.
- Pay close attention to deadlines to respond to motions. Always respond by the deadline. Seeking to vacate or set aside adverse orders after the fact is risky and bad form.
- If a motion is one customarily decided without hearing, notify the Judge's Courtroom Deputy of your intent to object and when you will file your objection.
- Chapter 13 Motions, such as dismissal for failure to make plan payments or dismissal for lack of feasibility, require a written response or those matters will be granted by default.
- **Motions for Relief on Cars:** It is not acceptable to appear at the hearing and request a continuance to amend the plan to reduce attorney's fees (the car creditor has to go additional months with little or no payments). When plans are proposed, you must ensure that the car creditor is receiving 1½ %.
- **Motions to Avoid Lien:** Your motion should contain the name of the action that created the lien, the case number, the court where the judgment was taken and the date, as well as the dollar amount. If the judgment was taken in circuit court in Missouri, then you also need to include information about when the judgment was transcribed, including court transcribed to and date of filing. If the judgment was taken elsewhere and then domesticated in Missouri, you need information on **BOTH** actions.

Pleadings

- Well drafted pleadings include a "comes now" statement or other opening statement, a body outlining the facts and legal issues, and a wherefore clause clearly stating all of the relief requested. Be sure to attach all relevant exhibits.
- Although it may seem obvious, ensure the moving party is entitled to the relief requested. For example, the party seeking relief from stay should be the party that is entitled to receive that relief, i.e. the lienholder, the landlord, the opposing party in pending litigation. If the party seeking relief is not the party listed on the lien documents, the lease, or the pleadings because of a property sale or assignment

of paper, then the pleading specifically should explain why that party is entitled to receive that relief and there should be exhibits that support that position.

- When requesting monetary relief, state the exact amount requested and how that amount was calculated if it is not obvious. State the interest rate if you want interest. Make sure that any equitable relief you request is available as a result of the type of pleading that you have filed. For example, a discharge is not going to be denied by motion, that requires an adversary proceeding.
- Include all necessary information and make all arguments. It is difficult to prepare for a hearing if all the facts are not pled and all arguments are not advanced in the pleadings. Avoid “testifying at the podium” or giving additional key information that may change the opposing party’s position.
- Pleadings must be drafted with clarity and cite authority for the arguments. Authority is the statute/s and case/s that support your position. Explain how the facts and the authority lead to your conclusion, particularly if you are making a novel or new argument. If you want to recover attorneys’ fees, then provide authority showing why your client is entitled to those fees in the case. The Court cannot make your arguments for you.
- Before using a “form” pleading, please check and make sure that the form applies and that it cites authority that is valid. Similarly, be aware of the issues associated with nunc pro tunc requests. *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, 140 S.Ct. 696 (2020).
- Consent motions should be titled consent motions and must include the signatures of all necessary counsel in the motion or in a separate document filed at the same time as the motion.
- When responding or objecting to a motion, list the document number of the motion in your caption (e.g. Doc. No. 14 or Docket No. 246). If you are filing a notice of hearing, please list the document number of the motion that is being set in the caption.
- Contact the Court as soon as possible after deciding you need a continuance. Failure to obtain the other party’s consent and requesting a continuance with little notice may result in the hearing proceeding as scheduled. The Chapter 13 Trustee has a process for requesting continuance on her web site. ([see Chapter 13 Trustee website](#)).
- If your matter is resolved prior to the hearing, **CALL** the appropriate Courtroom Deputy to inform the Court. You may be excused from appearing, depending on the Judge and the matter.

Certificates of Service

- Sample certificates of service are available on the Court's website. ([see Local Forms](#)). Ensure you have provided the correct date of service, the parties served, and the means of service, i.e. electronic or regular mail. You **MUST** specify who was served by ECF and who was served by regular mail. A "general statement" that the following people were served either by ECF or regular mail is insufficient.
- A certificate of service must list the people/entities served in accordance with the Local Rules. A general statement such as, "All interested parties have been served," is insufficient. ([see Local Rule 9004](#)). Service language must be clear and definitive as to how each person/entity was served.
- Serve motions and required notices of hearing on the proper parties and at the proper address. Failure to do so will result in a delay in obtaining the relief sought.
- When updating a debtor's social security number, be sure to serve all three of the major credit bureaus at their correct addresses and list those actual addresses in the certificate of service as well as the method by which service was made.
- Ensure you have served the registered agent for motions to avoid liens and motions to redeem. Note that service on an institution described under FRBP 7004(h) requires special service.
- As a courtesy, please transmit an extra copy of adversaries involving the United States to our AUSA contacts. They may not be referred the matter, but there is a greater likelihood that you will get someone's attention more quickly if you do so.

Submission of Proposed Orders

- The Court looks to counsel to submit proposed orders.
- Proposed orders must be e-mailed to the appropriate judges' order e-mail address which can be found on the Court's web site [HERE](#).
- Proposed orders must be well drafted and should be submitted timely in Microsoft Word format. If you create orders in another format and convert them to Microsoft Word, check for formatting problems before submitting.
- Include the docket number of the motion that the order disposes of in the caption of the order.
- Consistently refer to the correct motion throughout and proofread proposed orders before submission.

- The content of proposed orders should comply with the ruling given from the bench. You can copy what is requested in the motion into the order, no joke!
- Orders should not address relief that was not requested in a motion or addressed at a hearing. When the relief concerns property, provide a complete description of the property. For real property, include the legal description. For a vehicle, include the vehicle identification number.
- All proposed orders should clearly state what matter/motion was before the court, that the Motion was granted or denied and/or objection was sustained or overruled, and any additional relief that was requested. For example:

The matter before the Court is the Motion to Incur Debt. Upon consideration of the record as a whole,

IT IS ORDERED THAT the Motion to Incur Debt is GRANTED in that Debtor may purchase a car for \$10,000 with payments not to exceed \$200 per month. The Trustee's Objection to the Motion to Incur Debt is OVERRULED.

The matter before the Court is the Objection to Claim #2. Upon consideration of the record as a whole,

IT IS ORDERED THAT the Claim objection is SUSTAINED and Claim # 2 is disallowed or allowed as unsecured in the amount of \$2.

- DO NOT:
 - Include relief that was not requested in the written motion.
 - State that an order is "based on the evidence presented at hearing" if there was not any evidence presented at the hearing.
 - Include terms that were not explicitly in the Judge's ruling.
 - Add retention of jurisdiction language. This is superfluous. The Court either has jurisdiction or it does not. It cannot create it with a line at the end of an Order.
 - Add catch-all language in the Order such as "and such other relief as is just and proper."
- Pursuant to [Local Rule 9050](#), the end of proposed orders **MUST** contain the name and address of the person that prepared the order.

- Always know when you must submit a proposed order. Call the appropriate Courtroom Deputy if you are unsure of the deadline. ([see Procedures Manual](#)). You may prevail at a trial or hearing, but failure to submit the order timely (or at all) leaves the issue unresolved. Additionally, failure to timely submit a proposed order may result in the Bankruptcy Court entering an order dismissing your pleading for failure to prosecute, denying your motion, or resetting the matter for hearing.
- When submitting an amended version of an order previously transmitted (particularly in a Chapter 11 case), please note that you are sending the latest version and include a redline so that the Judge can see what changes were made from the prior version. Doing so speeds up review of these orders.
- Proofread your orders. The entire order should be in one font, paragraph indents should be consistent in the document, and there should not be excessive extra vertical spacing or margins over 1.25 inches maximum.

Negative Notice Matters

- In addition to the order, proposed orders on negative notice matters require a certification with the attorney's signature block.
- Make sure the certification and order refer to the same matter, i.e. certification should not reference a claim objection and the order reference a motion to incur debt.
- DO NOT:
 - Submit proposed orders until after the objection deadline expires.
 - Submit a certification and order if a hearing was held on the matter.
- Local Rule 9061 lists motions that can be set on negative notice. Negative notice is not appropriate for every motion. Certain motions, such as a Motion for Extension of Time, should never be set on negative notice.

Expedited Hearings

- You **MUST** call the appropriate Courtroom Deputy before setting an expedited hearing. Consult the Judge's calendar before calling. ([see Judge Information](#)). If the scheduled dates do not work, please prepare a list of a few other dates.

Extensions of Time

- The Court is reasonable in granting extensions of time so long as requests are made prior to the expiration of the initial time. Verify the requested date for the extension is a future date and for a reasonable length.

Filing Schedules and Statements

- Counsel has fourteen (14) days from when the case is filed to file schedules and statements. Counsel can request an additional fourteen (14) days. Failure to file schedules within twenty-eight (28) days will result in the case being dismissed. Other than in a Chapter 11 mega case, it is difficult to see how counsel could file a case without schedules after the passage of BAPCPA.
- A Creditor Matrix and Verification of Creditor Matrix **MUST** be filed along with the Voluntary Petition.
- If counsel requests an additional extension of time due to extraordinary circumstances, that must be plead in your motion for extension of time and the basis should be different from what was plead in your first motion for extension of time.

Adversary Practice

- When drafting an adversary complaint, ensure adherence to the “Iqbal/Twombly” pleading standard. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted; quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556, 557, 570 (2007)). The plausibility standard applies in “all civil actions.” *Iqbal*, 556 U.S. at 684 (citation omitted). This is more than old school notice pleading, but less than Missouri fact pleading. This avoids the waste of parties’ time when the defendant must ask for a more definite statement.
- Be aware of the heightened pleading standard required when pleading fraud pursuant to FRCP 9. Tell us the who, what, where, when, why, and how.
- When answering a complaint or motion, answer paragraph by paragraph. Do not lump the paragraphs that are admitted or denied into a one-sentence list, e.g. “Debtor admits to paragraphs 4, 6, 15, 17, and 23.” This creates more work for the law clerks and judges, and you run the risk of failing to answer every paragraph.
- File a motion for summary judgment if you believe that there is no genuine issue of material fact. There is no need for anyone to “have their day in court” if the matter can be disposed of without a trial. This wastes time and resources.
- Make sure to strictly follow the Court’s requirements in the Local Rules for pre-trial procedure and discovery. Also strictly follow the Court’s pre-trial order. These

orders are designed to provide a smooth and efficient trial. Failure to comply with pre-trial compliance requirements may affect you at trial. For example, failing to provide exhibits prior to trial may preclude you from introducing exhibits at trial.

- Preparation is the key!
 - Prepare your trial binders and organize them in the correct order.
 - Make sure you have thoroughly researched all issues.
 - Pay attention to trial orders and discovery deadlines. Every Court is different.
- Be familiar with the process for default judgments in adversaries. Consult the [Local Rules](#) and [Federal Rules](#).

General Information

- When the Clerk's Office issues a notice of errors and indicates that the Court has corrected the error, note the errors identified so they are not repeated.
- Issues such as order submission, scheduling of hearings, emergency scheduling, etc., are handled by the Judges' Courtroom Deputies.
- The contacts for the Judges' Chambers staff and Courtroom Deputies can be found on the Court's web site [HERE](#). Please keep in mind the prohibition of *ex parte* contacts and provision of legal advice. The Judges' Law Clerks and the Clerk's Office Staff cannot give you legal advice and cannot give you an "informal advisory opinion" about how the judge might rule on something.
- Administrative questions should be directed to the Law Clerk or Courtroom Deputy with a call. If they can answer your question, they will. If not, they will politely decline.