



Bankruptcy Clinic

CENTRAL DISTRICT OF CALIFORNIA: LOS ANGELES DIVISION

How to Write an Adversary Proceeding Complaint

(For your convenience, **key legal terms** are bolded and defined at the end of this guide under “Glossary of Terms.”)

An adversary proceeding is a lawsuit that relates to a bankruptcy case. There are a number of reasons to file an adversary proceeding. A creditor might file an adversary proceeding to determine that a debt included in a debtor’s bankruptcy cannot be **discharged**. On the other hand, a debtor might file one to attempt to get their student loans **discharged**.

The first step to filing an adversary proceeding is drafting your **complaint**. This guide will provide general information on how to write your complaint, including form and style requirements unique to the Central District of California Bankruptcy Court and the Federal Rules of Bankruptcy and Civil Procedure.

This self-help guide was made possible in part by: the Central District of California's Attorney Admission Fund, the American College of Bankruptcy, and the American College of Bankruptcy Foundation.

This guide is intended as a general overview and does not provide legal advice or create a lawyer-client relationship. Make an appointment at the Bankruptcy Clinic to speak to an attorney for individualized assistance.

Step 1: Pleading Paper

Complaints must be written on **pleading paper**. Pleading paper is letter-sized (8.5” x 11”) paper that has the numbers 1-28 typed down the left-hand side. It makes it easier for the judge and parties to reference important information. You can download a template of pleading paper in Microsoft Word format on our Bankruptcy Resources webpage.

Step 2: Format Your Complaint

Complaints may be typed or handwritten. If handwritten, the writing must be *neat*. By following the instructions below, you will comply with the format requirements for the Central District of California (see the picture to the right for a sample outline of what a

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	YOUR NAME EMAIL ADDRESS ADDRESS TELEPHONE Pro Se Plaintiff	UNITED STATES BANKRUPTCY COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA LOS ANGELES DIVISION	Case No.: INSERT Chapter: INSERT
	In re: DEBTOR NAME, Debtor.	YOUR NAME, Plaintiff, vs. DEFENDANT NAME, Defendant.	Adv. No. _____ COMPLAINT TO DETERMINE DISCHARGEABILITY PURSUANT TO 11 U.S.C. §§ 523(A)(INSERT) (Hearing date to be set by summons)
	TO THE HONORABLE JUDGE <u>INSERT</u> , UNITED STATES BANKRUPTCY JUDGE:		
	YOUR NAME, Plaintiff herein, files her Complaint to Determine Dischargeability of debt pursuant to 11 U.S.C. § 523(a)(INSERT) and alleges:		
	///		
	///		
	1 COMPLAINT TO DETERMINE DISCHARGEABILITY OF STUDENT LOAN DEBTS		

complaint might look like but which should not be copied since every complaint is unique):

- 1) **Font and Margins:** No smaller than 12 pt size font (suggested fonts: Times New Roman or Arial); 1-inch margins.
- 2) **Name and Contact Information:** Starting on Line 1, write your name, email address, street address, and phone number. Write “Pro Se Plaintiff” underneath your personal information.
- 3) **Line 8 or below:** Type the name of the court (United States Bankruptcy Court). On the next line, write the district name (e.g., Central District of California). On the next line, write the court division (e.g. Los Angeles Division, San Fernando Valley Division, etcetera).
- 4) **Party Names:** Below the name of the court and district, write the name of the debtor in the originating bankruptcy case.

Then, write the names of the plaintiff (you) and the defendant(s). If you are a creditor, the defendant(s) would be the debtor(s) in the originating bankruptcy case. If you are a debtor and filing an Adversary Proceeding in an attempt to **discharge** your federal student loans, the defendant would be the United States Department of Education.

11		
12	In re:	Case No.: INSERT
13	DEBTOR NAME,	Chapter: INSERT
14	Debtor.	
15		
16	YOUR NAME,	Adv. No. _____
17	Plaintiff,	
18	vs.	COMPLAINT TO DETERMINE
19	DEFENDANT NAME,	DISCHARGEABILITY PURSUANT
20	Defendant.	TO 11 U.S.C. §§ 523(A)(INSERT)
21		(Hearing date to be set by summons)
22		

- 5) **Case Number:** The case number of the originating bankruptcy case must be to the right of the party names. On the next line, include the chapter of the originating bankruptcy. On the line following, include space for the Adv. No. (You will get a case number for your adversary proceeding *after* you file your complaint, so leave the case number blank. Once you get a case number, you should include that number on every subsequent document you file with the court.)

Example of how to format this section:

Case No.:
 Chapter:

 Adv. No.:

- 6) **Title of Complaint and Demand for Jury Trial:** Under the Case Number, write the title of your complaint. The title of the complaint should briefly state the nature of your case and will generally start with the words “Complaint to Determine Dischargeability Pursuant to [Cause of Action].” After the title, type “(Hearing date to be set by summons).” If you will request a jury trial, you can also include a short statement on the next line “Demand for Jury Trial.”
- 7) **Text of Complaint with Numbered Paragraphs:** This is the main part of your complaint, in which you will write the facts and **legal claims** (also called “**causes of action**”) you are asserting in your lawsuit. This part must be double-spaced, and each paragraph must be numbered. **More complete instructions on what to write in your complaint are contained in Step 3 of this guide.**
- 8) **Date and Signature:** When you have finished writing your complaint, write the date, your signature and print your name.
- 9) **Demand for Jury Trial (Optional):** If you wish to request a jury trial, you must include a statement stating such following your signature. If you do not request a jury trial, a judge will decide your case. A discussion of whether to request a jury trial can be found under Step 3 of this guide (more specifically 7) of the subsection “What to Write In Each Section.”)
- 10) **Footer and Page Numbers:** Type or write the title of your complaint in the footer portion of your document. The title of the complaint must match the title of the complaint discussed under 6) of this section. Also, be sure that the title of your complaint and the page number appears on every page.

Step 3: Draft Your Complaint

The complaint should include the following sections:

- **Jurisdiction:** Explain why the federal bankruptcy court has power to adjudicate or make an official decision about your case.
- **Venue:** Explain why the court location or district (*e.g.* Central District of California) is the proper place to file your case.
- **Parties:** Identify the plaintiff and defendants in the case. Refer to 4) of the previous section for an explanation of the parties.
- **Statement of Facts or Factual Background:** Explain the relevant facts of your case.
- **Claim(s) for Relief:** List your legal claims (also called “**causes of action**”).
- **Request for Relief:** Explain what you would like the court to do.

Optional sections include:

- **Demand for Jury Trial:** You need to include this section only if you are requesting a jury.

- **Exhibits:** You are not required to submit **exhibits** or supporting documentation as part of your complaint. If you have drafted your complaint to contain the required facts and allegations, you may not need to include any exhibits at all. Please speak with the Bankruptcy Clinic for more advice on whether to include exhibits.

If you decide to include exhibits, please make sure you are redacting (blocking out) information that the Court requires you to. For example, make sure to redact all but the last four digits of your social security number, your birth year, all but the last four digits of bank account numbers, and names of minors (initials are okay). Additionally, you must attach the exhibits at the end of your complaint and label them “Exhibit A,” “Exhibit B,” and so on. You can “label” a document “Exhibit A” by placing a tabbed page that is labeled “Exhibit A” in front of that document. It is best to use tabs so that the court can easily find the exhibits.

What to Write in Each Section

- 1) **Jurisdiction:** In this section, you will state why the bankruptcy court has **subject matter jurisdiction** over your case—that is, why the court has the power to make an official decision about your case- and whether or not your matter is a core or non-core proceeding.
 - a) **Federal Question Jurisdiction:** Federal courts have subject matter jurisdiction over cases if their causes of action arise under federal law or relate to a federal question. Since a bankruptcy court is a federal court, it will have jurisdiction over adversary proceedings that raise causes of actions from federal bankruptcy law. In legal terms, bankruptcy courts have jurisdiction, under 28 U.S.C. § 1334, over cases under Title 11 of the U.S. Code (the source of Federal Bankruptcy law in the United States), as well as cases arising in or related to cases under title 11.

The following is a sample statement of why a court has jurisdiction over an Adversary Proceeding concerning the **dischargeability** of student loans:

On November 28, 2023 (the “Petition Date”), Mr. Doe, (“Mr. Doe” or “Plaintiff”) a resident of Los Angeles County, filed his voluntary petition under chapter 7 of the Bankruptcy Code, commencing this bankruptcy case (the “Bankruptcy Case”), in the Central District of California, Los Angeles Division. This case is numbered X. Therefore, this court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334.

Please note the jurisdiction statement will be different depending on the reason you are bringing the adversary proceeding.

- b) **Identify if your matter is a core or non-core matter:** Specifically, under 28 U.S.C. § 157(b)(1), a bankruptcy judge always has authority to hear and determine core proceedings or issues that arise under the Title 11 of the U.S. Code or the U.S. Bankruptcy Code, well it may or may not have authority to hear non-core proceedings or matters that do not involve the originating bankruptcy case itself but affect the outcome of the case.

Examples of core proceedings include but are not limited to:

- Matters related to the administration of the **bankruptcy estate**
- Proceedings to determine, avoid, or recover **fraudulent transfers**
- Objections to **discharge** of debt including student loans
- **Discharge** of student loans

The following is a sample statement that a case is a core proceeding:

This is a core proceeding pursuant to 28 U.S.C. § 157 [insert sub-section that applies].

If a bankruptcy case involves a non-core proceeding, the bankruptcy judge may resolve the non-core issues only if the parties consent and if the issues are not among those a bankruptcy court cannot resolve under any circumstances.

- 2) **Venue:** In this section, you will state why the Central District of California is the right **venue** or district in which to file your case. Keep in mind there are 94 bankruptcy district courts in the United States of America. Make sure that you have determined which district is proper to file in before drafting a statement of venue. Generally, the proper venue for an adversary proceeding is the bankruptcy court where the underlying bankruptcy case is pending. The following is an example of a statement of venue:

Venue is proper pursuant to 28 U.S.C § 1409(a) because this adversary proceeding arises under and in connection with a case under Title 11 which is pending in this District.

- 3) **Parties:** Explain who you are and who the defendant is. One way to identify the plaintiff and defendant is to write their full names, the county and state they reside in or have their headquarters in, whether they are the creditor or debtor in the originating bankruptcy case, and other relevant information so that the reader can understand each parties' relationship to the adversary proceeding.
- 4) **Statement of Facts:** In this section, you will write a summary of the facts relevant to your case.

It is important for you to be familiar with the **elements** of each **cause of action** you are raising in your complaint because you must include facts that satisfy those elements. Be sure to include **only** the relevant facts to support your claim. If you include too many

facts, you may be providing the defendant with ways to argue that your case should be thrown out and they may file a motion to dismiss your complaint. Additionally, stating conclusions, such as “The defendant owes \$1,000,” is not enough. *Show do not tell!*

In other words, if you are a creditor, you must explain why the debt owed to you should not be **discharged** or forgiven in the bankruptcy. You may consult 11 U.S.C. § 523 to understand some exceptions to discharge and which exception may apply to your situation so you can include the necessary facts to prove the debt owed to you should not be discharged.

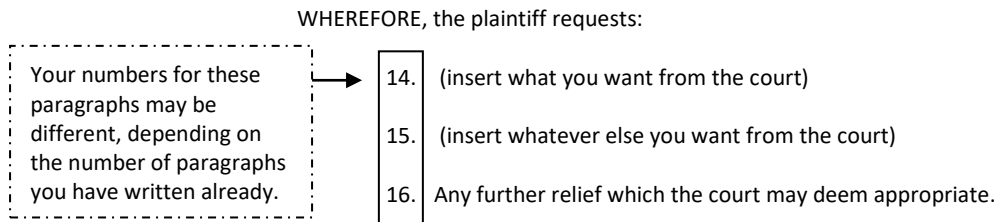
On the other hand, if you are a debtor attempting to get your student loans **discharged**, you must explain why the loans pose an undue hardship for you, among other things.

- 5) **Claim(s) for Relief:** After you have listed your facts, you should list your **legal claims** (also called “**causes of action**”).

If you are a creditor, this is the section in which you allege that under the law, the defendant’s debt cannot be **discharged** in a bankruptcy. You must identify the code that supports your claim. For example, if the defendant obtained credit from you and intentionally misrepresented their income or assets on the credit application knowing you would not have provided the credit if they told the truth, you can list 11 U.S.C. § 523(a)(2)(B). If you have several claims, separate them under different subsections, and title them, “Claim I,” “Claim II,” “Claim III,” and so on.

If you are a debtor trying to get your student loans discharged, you can list 11 U.S.C. § 523(a)(8).

- 6) **Request for Relief:** The term **relief** refers to solutions or remedies that the court is able to provide. In this section, you will write what you would like the court to do about your situation. List each request under a different paragraph with a different number. This part should look something like:



- 7) **Demand for Jury Trial:** If you do not want a jury trial or your Adversary Proceeding pertains to dischargeability (e.g. student loans), skip this part.

If you want a jury trial, you should request it in your complaint or within 10 days of filing your complaint. *Otherwise, you might give up your right to a jury.* Bankruptcy judges lack jurisdiction to preside over jury trials unless all parties agree to one. If parties

disagree about holding a jury trial, the adversary proceeding must be transferred to a district court.

If you wish to request a jury trial, include this request under the title of your complaint by writing: "Demand for Jury Trial." Also, state your request at the close of your adversary proceeding complaint underneath your signature line by typing: "Plaintiff hereby requests a jury trial on all issues raised in this complaint."

***** GENERAL REMINDERS *****

- Be sure to start each section in your complaint with the appropriate headings (**Jurisdiction**, **Venue**, **Parties**, **Statement of Facts**, **Claim(s) for Relief**, **Request for Relief**).
- Number each page and each paragraph.
- Include a footer with the title of your complaint on each page.
- Label any documents you would like the court to review as exhibits and attach them at the end of your complaint. Use tabbed pages to label the exhibits. Refer to the exhibits in your complaint.

Step 4: Turn Your Complaint In:

Once you have drafted your complaint, you must prepare an Adversary Proceeding Cover Sheet, available on the [United States Bankruptcy Court Central District of California Website](#). This form includes basic information about your Adversary Proceeding that the bankruptcy clerk uses to process your lawsuit.

WHAT DO I TURN IN WITH MY COMPLAINT?

- **Complaint**
- **Official Form 1040** (Adversary Proceeding Cover Sheet)
- **Filing Fee** (if you are a creditor)

In most cases, the originating bankruptcy case must be open at the time your complaint is filed. If you are a debtor filing an adversary proceeding, there is no filing fee. Creditors must pay a filing fee to file an adversary proceeding. Creditors who cannot afford the filing fee can speak with the attorneys at the Bankruptcy Clinic about drafting a request to waive the filing fee.

If you live within the Los Angeles Division, you may turn in or mail your documents and the filing fee (when applicable) to the Bankruptcy Intake Office:

United States Bankruptcy Court
Central District of California
Edward R. Roybal Federal Building and U.S. Courthouse
255 East Temple Street
Los Angeles, CA 90012

The Bankruptcy Court will accept U. S. Postal Service money orders or cashier's checks issued by an acceptable financial institution. The cashier's check or money order must read: "Pay to the Order of United States Bankruptcy Court."

PLEASE NOTE: There are often deadlines associated with filing adversary proceedings. You may lose your rights related to adversary proceedings if you file after your deadline.

Step 5: Serve the Complaint and Summons on the Defendant:

<u>ADVERSARY PROCEEDING</u>	
<u>CHECKLIST</u>	
<input type="checkbox"/>	Have I formatted my complaint correctly on pleading paper?
<input type="checkbox"/>	Have I titled my complaint?
<input type="checkbox"/>	Have I included all of the information required in my complaint? <ul style="list-style-type: none"> <input type="checkbox"/> Jurisdiction <input type="checkbox"/> Venue <input type="checkbox"/> Parties <input type="checkbox"/> Statement of Facts <input type="checkbox"/> Claims <input type="checkbox"/> Request for Relief <input type="checkbox"/> Demand for Jury Trial (optional) <input type="checkbox"/> Exhibits (optional)
<input type="checkbox"/>	Have I filled out the Adversary Proceeding Cover Sheet that I must file with my complaint?
<input type="checkbox"/>	If I have further questions, have I scheduled a consultation with the Bankruptcy Clinic?
<input type="checkbox"/>	Once the clerk has issued the summons, have I had the summons and complaint properly served and filed with the court?

After filing an adversary proceeding, the clerk will prepare a **summons**. It is your responsibility to ensure the complaint and summons are properly **served** on the defendant within seven (7) days of the date the summons was mailed to you (not seven days from when you received the summons). Be sure to check **PACER** to access the summons and have your summons and complaint served on time, since you may not have enough time to do so if you wait to receive the summons in the mail.

You must have a person over the age of 18 who is neither a plaintiff nor a defendant in the case serve a copy of your complaint and summons on the defendant. The person who serves the summons and complaint must then fill out a Proof of Service form that explains how service was accomplished and file it with the court. Rule 7004 of the Federal Rules of Bankruptcy Procedure explains the precise requirements one must follow and the Central District Bankruptcy Court provides further information [here](#).

Useful Link: Important Laws

To bring a case in bankruptcy court, you must also be familiar with the Federal Rules of Bankruptcy Procedure and the Local Rules of the Central District Court in which you are suing. You may find a copy of each at the following websites:

- **Federal Rules of Bankruptcy Procedure:** <https://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-bankruptcy-procedure>
- **Local Rules of the Central District of California:** [Local Bankruptcy Rules | Central District of California | United States Bankruptcy Court \(uscourts.gov\)](#)

Glossary of Terms

Adversary Proceeding: a lawsuit filed separately from, but that is related to, a bankruptcy proceeding. Refer to Rule 7001 of the Federal Rules of Bankruptcy Procedure for reasons these lawsuits can be brought.

Adversary Proceeding Cover Sheet: summarizes basic information about an adversary proceeding case. You must file one along with your complaint, unless you file electronically.

Bankruptcy Estate: all the debtor’s property and assets at the time of filing a bankruptcy.

Cause of Action: a group of facts that taken together entitle an individual to bring a lawsuit.

Complaint: the initial pleading that explains your case to the court and to the parties you are suing. In other words, the document that starts a lawsuit and lays out your allegations and demand(s) or request(s) for relief.

Discharge/ Discharged/ Dischargeability: order or direction from the court forgiving a debtor of certain debts.

Elements: a part of a claim that must be proved so that the claim can be successful.

Federal Question Jurisdiction: one of the ways for Federal Courts to have Subject Matter Jurisdiction (see definition) over a matter generally because the Cause of Action (see definition) falls under Federal Law.

Fraudulent Transfer: in some cases, the transfer of one’s property to another party in order to hide it from the bankruptcy trustee or defraud a creditor. In other cases, the transfer of property for less than its value, while also being unable to keep up with one’s financial obligations at the time. Refer to 11 U.S.C. § 548 for further definitions.

Legal Claim (also called “cause of action”)

Jurisdiction: the power of a court to make an official decision or ruling on your case.

PACER: also known as the Public Access Court Electronic Records. The system you can use to retrieve court records for a fee. Visit [HERE](#) to be granted same-day access.

Pleading: a formal written statement to the court.

Pleading paper: paper formatted with the numbers 1-28 along the left side margin; the required paper on which to draft complaints.

Relief: a solution that the court can provide that may or may not include money (may also be referred to as a **remedy** or **damages**).

Service: the delivery of summons or documents in a case to the parties involved.

Subject Matter Jurisdiction: when the court has the power to make an official decision about a particular type of case.

Summons: written notice to the defendant that a lawsuit has been filed against them.

Venue: the location of a court that may hear your case.