

What Is An Adversary Proceeding? by Karen Oakes, Southern Oregon Bankruptcy Attorney on September 25, 2007

An adversary proceeding is just like what it sounds like—someone is fighting with someone else in the bankruptcy court. There are three parties in the bankruptcy court case who can file an adversary proceeding—bringing someone in front of a judge to explain their actions in a hearing or a trial. Those parties are the creditor, the trustee (either the chapter trustee or the United States Trustee), and the debtor. Each of the kinds of adversarial proceedings means the judge will make a decision about the issues presented. And, since most debtors never meet the judge, this can be intimidating!

When a creditor files an adversary proceeding, it is usually because the creditor is arguing that the debt owed to the creditor should not be discharged in the bankruptcy. Why? The creditor may argue that the debt falls within one of the exceptions to discharge, such as a debt created through fraud, willful or malicious injury, or a personal injury caused by drunk driving. Or, the creditor may argue that the filing of the bankruptcy case was done in bad faith. These kinds of adversary proceedings are not common. If the client has been honest and told their attorney everything, the attorney will have warned the debtor/client in advance of the possibility of this kind of adversary proceeding.

A second kind of adversary proceeding is filed by the chapter trustee or the United States Trustee. A trustee may argue that the schedules were not filled out accurately and were intentionally fraudulent. A trustee may file a motion to dismiss if paperwork is not filed on time, improperly, or if the debtor misses a court date without a good reason. A trustee may also file an adversary proceeding to try to collect money back from a creditor who received funds or property from a debtor. A trustee may also file an adversary proceeding to undo a transfer of real property. (The trustee has more power than a debtor to get a “do over” in bankruptcy court.)

The United States Trustee may file an adversarial proceeding to force the debtor to move from Chapter 7 to Chapter 13 if the U.S. Trustee believes that the filing of the bankruptcy petition was done in bad faith. The U.S. Trustee may also file an adversary proceeding to dismiss the case if the U.S. Trustee believes the filing of any bankruptcy petition was done to abuse the bankruptcy system.

Lastly, a debtor may file an adversary proceeding against a creditor. The debtor may recover damages for a creditor’s actions taken in violation of the U.S. Bankruptcy Code, in violation of the automatic stay or the discharge injunction (once the debtor has received a discharge, the former creditors are no longer allowed to try to collect the discharged debts).

In any adversary proceeding, just because one is filed, it doesn’t mean that the filer will win the case against the other party. That is the judge’s job—to determine who is right and who is wrong. An attorney can advise as to the likelihood of success in an adversary proceeding, but really, the judge is the one who decides ultimately.