

**FILE A COMPLAINT
ADVERSARY PROCEEDING OPENING**

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File A Complaint **Adversary Proceeding Opening**

Introduction:

These detailed instructions guide you through the process of filing a complaint. The instructions do not address filing a notice of removal. Please call the Clerk's Office for instructions on how to submit the documents to file a notice of removal.

In the process of filing a complaint, a new adversary proceeding (AP) is opened and the adversary proceeding docket report is created in the Court's case management (CM) database. Once the filer clicks on the **Submit** button after loading the complaint pdf file and confirming the docket text, a Notice of Electronic Filing of the complaint is created and displayed on the screen. The notice of electronic filing is evidence of the filing and provides the adversary proceeding title and number, the date and time of filing, the filer's name, and the document description. The notice of electronic filing is transmitted via e-mail by the CM-ECF system to the filer's e-mail address on record with the Court.

Basic Guidelines for Filing a Complaint/Adversary Proceeding Opening:

Preliminarily, filers should adhere to the following basic guidelines:

- A. **Do not click on the back button (icon) in the browser menu bar.** CM-ECF does not accommodate use of the browser back button. If you need to make changes in previous screens, **YOU MUST START OVER** by clicking on the **Adversary** option in the blue CM-ECF main menu bar. The only time you should click on a back button to return to a previous screen is when the CM-ECF screen contains a **Back** button.

- B. **Convert the Complaint and Exhibits to portable document format (pdf) for E-filing.** The Complaint pdf must be filed as the main document with any exhibits being submitted as attachments. The maximum file size for any pdf file is 2 megabytes; if any file exceeds 2 MB, you may need to attach supporting documentation as separate pdf files. See "Breaking a PDF Document into Smaller PDF Files," under the *Procedures* link on the Court's website at --

<http://www.nmcourt.fed.us/web/BCDOCS/bcindex.html>

- 1) **Complaint pdf file.** Most practitioners use Corel WordPerfect or MS Word to create documents to be filed with the court. Documents created in either of these word processing software programs are easily converted to pdf (portable document format) by using the *Print* function in the word processing program.
 - 2) **Exhibit pdf file.** Exhibits to the complaint must also be submitted as pdf files. You may need to scan in the exhibits and save or print them to pdf; if you do scan in documents, be sure the resultant pdf file does not exceed 2 MB. If necessary, create several smaller pdf files rather than one large pdf file. See the procedure entitled, "Breaking a PDF Document into Smaller PDF Files," posted on the Court's *Procedures* web page.
- C. **Summonses are prepared by chambers staff of the judge** who is assigned to the related bankruptcy case. The filer of the complaint will receive the summons via the e-mailed Notice of Electronic Filing of the summons. The filer of the complaint should print the summons to paper and serve it on the appropriate parties pursuant to Fed. R. Bankr. P. 7004. Be careful also to serve the summons and complaint in the manner specified by the rule.

- D. **When filing additional documents** in the adversary proceeding, always use the AP number.
- E. **Practitioners should note** that not all of the document filing events that can be filed in an adversary proceeding are listed on the **Adversary** menu in CM-ECF. The Clerk's Office will fix this deficiency in a later upgrade, but for now, filers may also use any event on the Bankruptcy menu in CM-ECF for filing documents in an adversary proceeding. **When using Bankruptcy events to file a document in an adversary proceeding, be sure to enter the adversary proceeding number (not the related bankruptcy case number).**
- F. **Filing fees are paid on-line via Pay.gov.** You can pay fees as you file or you can choose to pay the filing fees for all documents you file during a single business day when you have finished filing for the day. You must, however, pay the fees due for the day by 9:00 pm that day. If you do not, the CM-ECF system will lock you out of ECF the next business day. Read the **CM-ECF Guide to On-line Credit Card Payments**. From the Court's website (www.nmcourt.fed.us/web/BCDOCS/bcindex.html), click on Procedures, then on CM-ECF (E-filing) Instructions, and then on Credit Card Payments.

File Complaint/Open Adversary Proceeding in CM-ECF

- STEP 1** Log in to CM-ECF at <https://ecf.nmb.uscourts.gov/>
- Click on the **Adversary** menu option in the blue CM-ECF menu bar.
- STEP 2** The **Adversary Events** menu displays.
- Click on the **Open AP Case** hyperlink. For more help with each screen, click on the yellow question mark icon.

STEP 3 The **Open Adversary Case** screen displays:

- Case Type defaults to **ap**.
- Date Filed is the current date.
- Complaint defaults to **"y"**.

- Select **"y"** for yes if you are filing a complaint.

- Click on the **Next** button. The **Clear** button will return all selections to their default values.

STEP 4 The **Open Adversary Case** screen displays:

- Lead case number** box: enter the related bankruptcy case number as yy-xxxxx, e.g., 05-12345, only. **Do not** add chapter or judge/location designation.

- **Association type** defaults to Adversary. Always use the default **Adversary**.

- Click on the **Next** button to continue with adversary proceeding opening. The **Clear** button will return all selections to their default values.

STEP 5 The **Open Adversary Case** screen displays:

- If the related bankruptcy case is pending, the system will display a message similar to this:

"Case is assigned to Albuquerque Division, Judge McFeeley based on the lead Bankruptcy case 07-10019-m7."

- If the related bankruptcy case is closed, the system will warn that the case is closed. To exit adversary proceeding opening at this point, click on the **Adversary** option in the CM-ECF main menu bar.
- Click on the **Next** button to submit this information and continue with case opening. The **Clear** button does not do anything on this screen.

STEP 6 The **Search for a plaintiff** screen displays.

- If a plaintiff is the debtor and you have the debtor's Social Security Number (ssn), enter the ssn.
- If plaintiff is not the debtor, search by name using the following tips:
 - For an individual, enter first and last name.
 - If searching a business or company name, enter the company name in the Last Name field.
 - It is not necessary to use an asterisk (*) in CM-ECF to perform a search; partial names can be searched.
 - Format social security number or tax ID with hyphens.
 - Searching is not case sensitive (use Smith or smith).
 - If an apostrophe or hyphen is part of the name, include it (O'Brien). Omit other punctuation, such as periods or commas.
 - Try alternate search clues if your first search is not successful.
- Click on the **Search** button. The **Clear** button returns selections to default values.

STEP 7 **IF the name exists in the database**, the name will appear in the **Party search results** list. The name may be listed several times. You will want to select the name which has the same address (or ssn, if plaintiff is the debtor) as the party you represent. To make this determination, do the following:

- Select a name by clicking on it.
- Review name and address information which appears in the pop-up window.
- Be sure to close the pop-up window before selecting another party listed.
- Select a name **only** if all information is an exact match.
- Click on the Select name from list button.

STEP 8 If you selected a party from the list, the **Plaintiff Information** screen displays with the party's name and address already entered.

- It is not necessary to add or change the contact information. The address of record will be that of the attorney representing the party.
- Party Text:** Enter any other descriptive information, (e.g., a New Mexico corporation, Personal Representative of the Estate, etc.)
- Role in Bankruptcy:** Select the party's role in the related bankruptcy case.

- If party has alias names, click on the **Alias** button and follow the directions in STEP 9 below to add aliases.
- Click on the **Attorney** button and proceed to STEP 12 to add the attorney of record.
- If the social security number (last 4 digits) or the name and the address are not exact matches, click on the **Create New Party** button and go to STEP 9 to continue.

STEP 9

If there is no match found in the database for the party you are searching for, click on the **Create New Party** button. The Plaintiff Information screen displays. The fields and buttons are listed below in order as they appear on this screen; see instructions for each.

- Office: Leave blank.
- Address fields: Leave blank as the address of record will be that of the attorney representing the party.
- Country, Phone, Fax, E-mail: Leave blank.
- Party Text:** Enter any other descriptive information, (e.g., a New Mexico corporation, Personal Representative of the Estate, etc.)
- Role in Bankruptcy:** Select the party's role in the related bankruptcy case.
- If the party has alias names, click on the **Alias** button.

NOTE: Do not click on the **Alias button** unless you need to add an alias name for the party. If you click on the **Alias button** and you do not have an alias name to add, you will need to abort the process now by clicking on the **Adversary** option in the blue **CM-ECF Main Menu Bar**. You will then need to start over.

- Enter all alias names (up to 5).
- Select the correct **Role** type for each alias:
 - aka = also known as
 - dba = doing business as
 - fdba = formerly doing business as
 - fka = formerly known as
- Click on the **Add aliases** button to add the alias name and to return to the **Plaintiff Information** screen.
- At the **Plaintiff Information** screen, click on the **Review** button to review the alias names you have added.
- To exit the **Review attorneys, aliases and corporate parents** screen, click on the **Return to Party screen** button.

STEP 10 **IF THE PLAINTIFF IS A CORPORATION** (and is not the debtor), a Corporate Ownership Statement must be filed pursuant to Rule 7007.1.

- If there are any reportable corporate names, enter the names via the **Corporate Parent** button.
- If there are no reportable names, ignore the **Corporate Parent** button.

STEP 11 ADDING CORPORATE PARENTS

- To add the corporate names listed on the Corporate Ownership Statement, click on the **Corporate Parent** button.
- Enter the entire business name in the field "Last name."
- Click on the **Search** button.
- If the name you are searching appears in the Search report results list, select the name.
- If the Corporate Parent search results are "No person found," click on the **Create new corporate parent** button. The name you searched will appear in the field under **Corporate Parent Name**.
- If you have another name to enter, type in the name. As soon as you type in another name, another field will display.
- If you have no other names to enter, click on the **Add Corporate Parent** button. This will return you to the Plaintiff Information screen.
- To review the corporate parents and aliases you have added, click on the **Review...** button.
- At the review screen, you may uncheck any corporate parent name you may have entered in error.
- Click on **Return to Party screen** button.

STEP 12 At the **Plaintiff Information** screen:

- Click on the **Attorney** button to add the Plaintiff's attorney.
- The **Search for an Attorney** screen is displayed.
- Add the attorney's **last name** and/or **Bar ID** number.
- Click on the **Search** button.
- Although you have selected an attorney for the plaintiff, the system doesn't automatically link or associate the attorney with that party. This screen, then, is to link the selected party with the attorney who is logged in.
- At attorney search results, select your attorney name
- Click on the **Select name from list** button.

STEP 13 The **Attorney Information** screen is displayed.

- Verify the attorney information.
- Lead attorney** defaults to "yes," change to "no."
- Click on the **Add attorney** button.
- You may receive Warning messages that fields have been left blank.
- Click on the **OK** button for each.

- You must click on the **Add Attorney** button for each Plaintiff added to the case.

STEP 14 The **Plaintiff Information** screen displays again.

- Ensure any additional party text has been entered, if applicable.
- Ensure the correct **Role** type in the **Bankruptcy** has been selected for the party.
- Click on the **Submit** button.
- You will receive Warning messages alerting you to the blank fields.
- Click on the **OK** button for each.
- Continue this process until all Plaintiffs have been entered.
- Click on the **Add Attorney** button for each Plaintiff added to the case.
- Click on the **End plaintiff selection** button once you have entered all plaintiffs for the case.

STEP 15 After the plaintiffs have been added, **Add Defendants** to the case in the same manner as the plaintiff(s) was added in STEPS 6 through 14 above.

- **NOTE: DO NOT** enter attorney(s) for defendant(s). They will be added to the case when a responsive pleading is filed.

- ❑ After the last party as been entered, click on the **End defendant selection** button.

STEP 16 The **Nature of Suit** information screen displays.

- ❑ At **Party Code** select one:
 1. U.S. is a Plaintiff
 2. U.S. is a Defendant
 3. U.S. is not a Party (system defaults to this selection)
- ❑ Select the **Nature of Suit** from the pick list. There are several to select from, so be sure you select the correct one or more than one, if necessary.
- ❑ **Rule 23 (class action)**: usually n.
- ❑ **Jury Demand (Defaults to None)**:
 - Both
 - Defendant
 - None
 - Plaintiff
- ❑ **Demand (\$)** dollar amount. Enter this to the nearest thousand (i.e., 2 for \$2,000 or 10 for \$10,000).
- ❑ **State Law (n = no, u = unknown, y = yes)** Check if case involves a substantive issue of state law.
- ❑ Click on the **Next** button.

STEP 17 The **Filer Type** screen displays, which begins the determination if a fee is due, may be deferred, or will be waived.

Answer **y** or **n**, the following question: Is...

(1) the Plaintiff the Debtor;

(2) the Filer an Exempt Federal Agency; or

(3) the Filer a Child Support Creditor or its Representative?

Click on the **Next** button.

STEP 18 If you answered yes, the next screen displayed indicates that the filing fee will be waived.

Click on the **Next** button.

STEP 19 If you answered "n" to the question, the next question in the series is presented:

Answer "Yes" or "No" to the following question:

Is the Plaintiff the Case Trustee or the Debtor-in-possession?

If you answered yes, the next screen displayed indicates that the filing fee will be deferred.

Click on the **Next** button.

STEP 20 If you answered "No" to the question, the screen displays the filing fee associated with this filing.

Click on the **Next** button.

STEP 21 The **Select the pdf document** screen displays.

- Click on the **Browse** button and locate the pdf file. If necessary (e.g., when using Netscape as your Internet browser), change the "Files of type" selection to "All Files."
- Right click on the pdf file and open it to verify that it is the correct document. Close the Adobe Acrobat screen by clicking the **X** in the upper-right corner.
- If the pdf file is not the correct document, find the correct pdf file before continuing. If you cannot find the correct pdf file, **YOU MUST START OVER** by clicking on the **Adversary** option in the blue CM-ECF main menu bar. Find the correct file and start over.
- If the pdf file is the correct document, highlight the pdf file and click on Open. **Important:** Once you submit a document for filing in CM-ECF, the document is officially filed and entered on the docket. For this reason, **always open and view the pdf file just before you upload it for transmission to the CM-ECF database.**
- If there are attachments, click on the **Yes** radio button.
- Click on the **Next** button.

STEP 22 The **Select One or More Attachments** screen displays if you clicked **Yes** on the radio button for attachments.

- Click on the **Browse** button and follow instructions in STEP 6.

- ❑ Choose the desired combination of Type and/or Description to create the text for this portion of your complaint entry. *For example, choosing Type "Exhibit" and entering the Description "1" will produce this entry: (Attachments: # (1) Exhibit 1).*
- ❑ Click on the **Add To** button. The screen reloads, and the path and file name of your attachment appear in the add-to box. Repeat this process to upload additional attachments.
- ❑ Click on the **Next** button when finished uploading attachments.

STEP 23 Enter the related BK (bankruptcy) case number as follows: yy-xxxxx, e.g., 05-12345, only. **Do not** add chapter or judge/location designation

- ❑ Click on the **Next** button.
- ❑ A blank screen appears, click on the **Next** button.

STEP 24 The **Docket Text: Final Text** screen displays

- ❑ Click on the **Next** button if the final text is accurate. If you discover an error, **YOU MUST START OVER** by clicking on the **Adversary** option in the blue CM-ECF main menu bar.

STEP 25 The **Notice of Electronic Filing** screen displays. Print a copy of the screen for your records. This notice is evidence of the filing and provides the adversary proceeding title and number, the date and time of filing, the filer's name, and the document description.

- Clicking on the adversary proceeding number hyperlink will display the docket report for the adversary proceeding.

- Clicking on the main case number hyperlink will display the docket report for the main case.
- Clicking on the document number hyperlink will display the pdf image of the document just filed.
- If you have not already associated your PACER log in/password with your CM-ECF log in/password, the system will ask for your PACER log in and password.
- PACER will assess a fee (8 cents per page) to view/print the document or docket report. To obtain your free look, print the document from the Notice of Electronic Filing (a/k/a "NEF") you receive in your e-mail in-box when you file documents electronically.
- To obtain a PACER account, go to <http://pacer.psc.uscourts.gov/> or call the PACER Service Center at (800) 676-6856.

STEP 26 The **Electronic Payment** prompt displays. *(Exception: The screen does not display when answering YES in STEP 17.)*

- Select **Pay Now** button to make payment.
- OR **Continue Filing** button to file other cases prior to making payment or to exit the module.
- Refer to the **CM-ECF Guide to On-line Credit Card Payments** for an explanation of the electronic payment module. From the Court's website (www.nmcourt.fed.us/web/BCDOCS/bcindex.html), click on Procedures, then on CM-ECF (E-filing) Instructions, and then on Credit Card Payments.