

## **LBR 5075.1(a)(1)(A) Refresher – Clerk’s Extension of Time to Answer**

Formerly known to many practitioners as the “Clerk’s 10-day extension,” consistent with the time computation amendments to the Federal Rules of Bankruptcy Procedure, the local rule allows the Clerk to enter an Order granting a **14-day** extension of time to answer or respond to an adversary complaint. Remember, the Clerk’s extension is a one-time extension. *See* LBR 5075.1(a)(1)(A)(i).

LBR 5075.1(a)(3) requires that the Order submitted for the Clerk’s signature contain certain information: (1) the original answer date (the date that the answer is initially due); (2) the new answer date (the date that the answer will be due with the 14-day extension); and (3) the initial answer date has not expired (*i.e.* the Clerk’s extension is timely sought).

A Clerk’s 14-day extension should be sought by Motion also containing the above information, together with a proposed Order attached as an exhibit to the motion for the Clerk’s signature (*see attached sample re: Clerk’s 14-Day Extension Of Time*). A Clerk’s Order should not be combined with any other pleading such as an Entry of Appearance for the defendant. The motion should be docketed to the adversary case in CM/ECF using the following menu option: **Adversary > Motions > Extend/Shorten Time**

### **Calculating the original answer date:**

There appears to be much confusion or misunderstanding of when the answer time begins to run in an adversary proceeding. It differs from a non-bankruptcy federal district court civil suit. Fed. R. Bankr. P. 7012(a) states that if the adversary complaint is duly served, a non-governmental defendant shall serve an answer within 30 days after the *issuance of the summons*. In contrast, Fed. R. Civ. P. 12(a)(1)(A)(i) states that a non-governmental defendant shall serve an answer within 21 days *after being served with the summons and complaint*. In short, 30 days after issuance of the summons is not necessarily the same as 30 days after service of the summons. It is not uncommon in adversary proceedings where service may be made by first class mail, Rule 7004(b), that the summons is issued on a different date than the summons is served. In the docket report of an adversary proceeding, there will be docketed entries for a request for summons, issuance of the summons, and execution (or service) of the summons. Keep in mind that under Fed. R. Bankr. P. 7004(e), the plaintiff has up to 7 days after issuance of the summons to deposit the summons and complaint in the mail for service. Also, if the 30<sup>th</sup> day after issuance of the summons lands on a Saturday, Sunday, or Legal Holiday, the answer is due on the next day that is not a Saturday, Sunday, or Legal Holiday. *See* Fed. R. Bankr. P. 9006(a)(1).

### **Debtor Defendants:**

Fed. R. Bankr. P. 7012(a) is careful to contain the proviso “if the adversary complaint is duly served,” the answer is due 30 days after issuance of the summons.

Remember, if the defendant is the debtor and debtor is represented by counsel in the bankruptcy case, Rule 7004(g) requires service of summons and complaint on both the debtor and the attorney. Debtor is served pursuant to Rule 7004(b)(9) and debtor's attorney is served pursuant to Fed. R. Civ. P. 5(b). In such a case, if either one is not served, service is incomplete and insufficient. Giving the debtor's attorney notice of the filing of the adversary complaint through the ECF system is not sufficient. *See Clune Company, LC v. Johnson (In re Johnson)*, 2011 WL 482837 (Bankr. D. Kan. Feb. 7, 2011) (Somers, J.); Appendix 1-01 to D. Kan. LBR 5005.1, § II.D. and § IX.C. Service on the debtor by first class mail to the address provided on the petition is complete when the summons and complaint are mailed, whether the address is correct or not. *See In re Tatum*, 2012 WL 2076424 (Bankr. D. Kan. June 7, 2012) (Nugent, C.J.); *In re Wallace*, 316 B.R. 743, 747 (10<sup>th</sup> Cir. BAP 2004); Fed. R. Bankr. P. 9006(e) (service of process by mail is complete on mailing).

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS

In Re:

	)	
Debtor 1	)	Case No.
Debtor 2	)	Chapter
	)	
Debtors.	)	
_____	)	
	)	
Plaintiff (s) Name(s)	)	
	)	
Plaintiff,	)	
v.	)	Adversary No.
	)	
Defendant(s) Name(s)	)	
	)	
Defendant.	)	
_____	)	

SAMPLE ONLY

CLERK'S 14-DAY EXTENSION OF TIME

Now on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, upon the timely application of the defendant, \_\_\_\_(Defendant's name)\_\_\_\_, and pursuant to the authority vested in the Clerk of the Court by Local Bankruptcy Rule 1001.1(a) and 5075.1 (a)(1), the initial time to answer or otherwise plead to plaintiff's Complaint has not expired and is hereby extended fourteen (14) additional days from the current answer date of \_\_\_\_(Current Answer Date)\_\_\_\_ to \_\_\_\_(New 14 Day Extension Date)\_\_\_\_.

Dated: \_\_\_\_\_

David D. Zimmerman, Clerk  
United States Bankruptcy Court

\_\_\_\_\_  
Deputy Clerk