

**JUDGE JANICE MILLER KARLIN'S
GUIDELINES FOR CONCLUDING AN ADVERSARY PROCEEDING**

There are 3 ways to resolve and close an adversary proceeding:

1. **Dismissal**¹ - resolves the legal action from a procedural perspective (Fed. R. Civ. P. 41 made applicable in adversary proceedings by Fed. R. Bankr. P. 7041—[copy attached](#)).
 - a. Before service of a response – The plaintiff may dismiss an adversary proceeding without court order by filing a “Notice of Dismissal” at any time before the defendant responds. Fed. R. Civ. P. 41(a)(1)(i). See [Exhibit A](#) for a “Notice of Dismissal” form.
 - b. After service of a response –
 - i. The adversary proceeding may be dismissed upon the filing of an “Agreed Stipulation of Dismissal” signed by counsel for all parties who have appeared in the action (or by pro se parties if no counsel has entered appearance for an answering defendant). Fed. R. Civ. P. 7041(a)(1)(ii). See [Exhibit B](#) for an “Agreed Stipulation of Dismissal” form.
 - ii. Plaintiff may file a “Motion to Dismiss” to obtain an Order of Dismissal. Fed. R. Civ. P. 41(a)(2). See [Exhibit C](#) for a “Motion to Dismiss” form.
 - (1) Because this is a dispositive motion, a 21-day response time is allowed unless it is a motion signed by all parties who have entered an appearance. See D. Kan. Rule 6.1(d)(2) regarding response times for dispositive and non-dispositive motions in adversary proceedings.
2. **Settlement** - an agreement between the parties that resolves the substance of the dispute.
 - a. Parties may dismiss an adversary proceeding as set forth above, or they may submit an “Agreed Journal Entry of Judgment” and the court will enter a judgment and close the adversary proceeding after the appeal time has run. Enforcement of the settlement agreement must be sought in state court unless there is some independent basis for federal jurisdiction or the judgment

¹A plaintiff may not dismiss a complaint objecting to a debtor’s discharge (§ 727 action) without notice to all parties in interest. A motion to dismiss the adversary proceeding should be accompanied by the affidavits required, and should be prepared in accordance with D. Kan. LBR 7041.1 and served upon the case trustee, the United States Trustee, all creditors and any person who has requested notice. See Fed. R. Bankr. P. 7041; D. Kan LBR 7041.1.

specifically calls for retention of jurisdiction. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).²

- b. The parties may agree to stay execution of the judgment pursuant to the terms of the settlement agreement. See [Exhibit D](#) for an “Agreed Journal Entry of Judgment” form.
 - i. Parties may request that the court close the adversary proceeding subject to reopening, without a fee, for the purpose of entering judgment against the defendant (in the event of default). Fed. R. Civ. P. 41(a)(1)(ii). Parties should file an “Agreed Stipulation of Dismissal” specifically requesting that the Order of Dismissal incorporate the terms of the settlement agreement and/or that the court specifically retain jurisdiction over the settlement agreement. *See Morris v. City of Hobart*, 39 F.3d 1105 (10th Cir. 1994). See [Exhibit E](#) for an “Agreed Stipulation of Dismissal” form.
 - c. Upon full performance of a settlement agreement, the parties shall file an “Agreed Stipulation of Dismissal” signed by all parties who have appeared in the action.” See Fed. R. Civ. P. 41(a)(1)(ii). *See Exhibit B* for an “Agreed Stipulation of Dismissal” form.
3. **Judgment** - Final legal determination of disputed legal or factual issues that resolves legal rights from which an appeal can be taken. The adversary proceeding will be closed by the Court Clerk 14 days after entry of the final judgment unless the judgment is appealed or there are other issues pending.³ See [Exhibit F](#) for a form commonly used by Chapter 7 Trustees. It grants a money judgment against Debtor/Defendant but then stays execution while allowing repayment of the sum certain. It also contains an agreement that discharge will be revoked only if the money judgment is not paid, and after notice is provided.

²Bankruptcy Rule 9019 provides that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a).

³Remember that when defendants(s) have satisfied the judgment, a Satisfaction of Judgment must be filed by Plaintiff.