Consumer Practice Extravaganza

Responding to Complaints in Federal Court: Strategies and Considerations

Hon. Scott C. Clarkson
U.S. Bankruptcy Court (C.D. Cal.) | Santa Ana

Hon. Heather Z. Cooper
U.S. Bankruptcy Court (D. Vt.) | Rutland

Kara Gendron
Mott & Gendron Law | Harrisburg, Pa.

Maurice B. VerStandig
The Belmont Firm | Washington, D.C.

CONCURRENT SESSION

2023

Responding to Complaints in Federal Court: Strategies & Considerations

Hon. Heather Z. Cooper

U.S. Bankruptcy Court (D. Vt.) | Rutland

Hon. Scott C. Clarkson

U.S. Bankruptcy Court (C.D. Cal.) | Santa Ana

Kara Gendron

Mott & Gendron Law | Harrisburg, Pa.

Maurice B. VerStandig

The Belmont Firm | Washington, D.C.

UNITED STATES BANKRUPTCY COURT
FOR THE [DISTRICT]

In re: [debtor name] et al. Debtors. [plaintiff name], Plaintiff, -against- [defendant name] Defendant.	Chapter 11 Case No. [number] Jointly Administered Adv. Proc. No. [number]

Drafting Note to Caption.

This is the general format for captions used in adversary proceedings commenced in a bankruptcy case. Bankruptcy Rule 7010 states that the caption of each pleading must conform substantially to the appropriate Official Form. For a copy of the caption form, see Official Form 416D, Caption for Use in Adversary Proceeding. Note that this caption is for use in jointly administered cases in a Chapter 11 case. If filing an adversary proceeding in a case where there is a single debtor, the case is not jointly administered, or the case is not a Chapter 11 case, change debtors to singular (in the caption and throughout the form), remove the reference to joint administration, and change the case chapter accordingly. Make sure to check local rules and joint administration order (if applicable) for jurisdictional and case specific caption requirements.

ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT [NAME]

[Defendant name] ("[Defendant Name]" or the "Defendant"), by and through its undersigned counsel, for its answer and affirmative defenses to the [name of complaint] (the "Complaint") filed by [plaintiff name] (the "Plaintiff"), respectfully states as follows:

Drafting Note to Opening Paragraph.

This form is drafted as an adversary proceeding with one plaintiff and one defendant but can be amended or revised depending on the number of parties. The general pleading requirements are governed by Federal Rule 8, made applicable to adversary proceedings pursuant to Bankruptcy Rule 7008 (with modifications). Fed. R. Bankr. P. 7008. The Supreme Court has interpreted pleading rules in deciding motions to dismiss, finding that the court must look at the elements

that must be pled to state a claim and decide whether the complaint contains sufficient factual matter to state a plausible claim for relief. See Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009). Note that this form uses a generic placeholder for the defined term for the defendant's name and counsel should revise the defined term as appropriate. NOTE: THERE ARE NO "DOES" PLEADING IN FEDERAL COURT.

NATURE OF THE ACTION

1. In response to paragraph 1 of the Complaint, Defendant admits that it is a [defendant's entity status with short description]. Except as expressly admitted, Defendant denies each and every allegation of this paragraph.

Drafting Note to Paragraph 1.

The nature of the action, sometimes called a preliminary statement or introduction, gives the court a snapshot of the case and the issues raised. The Federal Rules generally permit the following responses to a complaint's allegations (1) admission, (2), denial, and (3) a statement that the responding party lacks knowledge or information sufficient to form a belief as to the truth of the allegation, which has the effect of a denial. Fed. R. Civ. P. 8(b). Respond to each paragraph of the complaint with a corresponding paragraph answering its allegations with one of these permitted responses. Counsel can also (or may be required by local rule) repeat the allegation contained in the paragraph before the response. Be careful to respond to all the allegations, as failing to respond may result in an allegation being deemed admitted. Fed. R. Civ. P. 8(b)(6). Use Alternate Paragraph 1. for a response that does not admit or deny the allegation.

Alternate Paragraph 1.

The allegations contained in paragraph 1 of the Complaint state conclusions concerning the nature of the case, to which no response is required. To the extent that a response is required, Defendant denies the allegations contained in paragraph 1 of the Complaint.

JURISDICTION AND VENUE

2. The allegations of Paragraph 2 of the Complaint are legal conclusions to which no response is required.

Drafting Note to Jurisdiction and Venue.

The complaint must set forth a short and plain statement of the grounds for the court's jurisdiction over the action. Fed R. Civ. P. 8(a)(1). Though the Federal Rules only require the

basis for the court's subject matter jurisdiction, most attorneys also use this section to plead the basis for the chosen venue. When initiating an adversary proceeding, the plaintiff must state the grounds for the court's jurisdiction. Fed. R. Bankr. P. 7008. The plaintiff must state whether it does or does not consent to the entry of final orders or judgments by the bankruptcy court. Fed. R. Bankr. P. 7008. Note that the Bankruptcy Rules were amended in December 2016. Prior to the amendments, the plaintiff was required to include an allegation in the complaint that the adversary proceeding was core or noncore. Bankruptcy Rule 7008 was amended in 2016 to remove this requirement and add the mandate that requires parties to state whether or not they consent to the judge entering a final order or judgment. The jurisdiction rules are complicated in bankruptcy cases and counsel should generally understand potential jurisdictional issues before filing an answer. You may want to assert that another court has jurisdiction over the adversary proceeding.

PARTIES

3. Defendant admits the allegations in paragraph 3 of the Complaint.

Drafting Note to Paragraph 3.

The complaint must identify the parties. Fed. R. Civ. P. 10(a). True allegations must be admitted. Fed. R. Civ. P. 8(b). However, an admission should not be used if there is doubt as to the allegation's truthfulness after a reasonable inquiry. Carefully scrutinize the allegations before making any admissions, as the court may not permit you to amend the answer later to correct an oversight.

4. Defendant denies the allegations in paragraph 4 of the Complaint.

Drafting Note to Paragraph 4.

Allegations should be denied if counsel believes, after a reasonable inquiry, that they are false. Fed. R. Civ. P. 8. Federal Rule 8(b)(2) states that a denial must fairly respond to the substance of the allegation, and counsel must parse the allegations and only deny those components that counsel and the defendant believe are false.

BACKGROUND

VARIOUS other RESPONSES AVAILABLE:

5. Defendant denies the allegations in paragraph 5 of the Complaint, except that it is admitted that on [date], [allegations admitted, such as defendant entered into a contract with the plaintiff].

6. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 6 of the Complaint.

Drafting Note to paragraph 6.

Counsel may respond to an allegation with a statement that the defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation. Fed. R. Civ. P. 8(b). This response, which is treated as a denial, should be used when counsel does not have access to the material necessary to make an informed answer, such as when the allegations concern information solely within the control of the plaintiff. Do not use this response if your client has knowledge about the allegation or if information about the allegation is readily available, like when it concerns a matter of public record.

7. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 6 of the Complaint.

8. Defendant admits [admitted component]. Defendant lacks knowledge or information sufficient to form a belief as to [component about which defendant lacks knowledge or information]. Defendant denies the remaining allegations contained in paragraph 8.

Drafting Note to Paragraph 8.

You may combine the permitted responses when the paragraph to which you are responding contains multiple or compound allegations. Fed. R. Civ. P. 8(b).

Another example:

9. Defendant admits the allegations in paragraph 9 of the Complaint, except that it denies the qualification implied by the use of the word "only."

FIRST CLAIM FOR RELIEF

([Name of Count])

10. Defendant repeats and restates each and every response to Paragraphs 1 through [9] of the Complaint as if fully set forth herein.

11. The allegations contained in Paragraph 11 of the Complaint state a legal conclusion to which no response is required. To the extent that a response is required, Defendant denies the allegations contained in Paragraph 11 of the Complaint.

Drafting Note to First Claim for Relief.

This sample answer is to a complaint that only contains one claim for relief Counsel should separately answer each claim for relief in the same or similar manner used in this form.

12. Except as expressly stated above, Defendant denies each and every allegation in the Complaint.

Drafting Note to Paragraph 12.

Consider including a blanket denial before the defenses section. This makes clear that you deny all allegations unless you have specifically admitted a particular allegation.

AFFIRMATIVE AND OTHER DEFENSES

13. Defendant asserts the following defenses to the Complaint:

Drafting Note to Affirmative and Other Defenses.

Affirmative defenses raise new facts separate from those in the plaintiff's claims for relief and provide a complete defense, even if the allegations in the complaint are true. The defendant that raises an affirmative defense has the burden of proving it. You may only plead affirmative defenses for which you have factual and legal support, so avoid the temptation to plead a laundry list of affirmative defenses. Fed. R. Civ. P. 11(b). Affirmative defense allegations must be stated "in short and plain terms" Fed. R. Civ. P. 8(b)(1)(A). Courts currently disagree about whether affirmative defenses are subject to the heightened pleading standard introduced by the Supreme Court in Twombly and Iqbal, which requires allegations to state a "plausible" claim for relief. See Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007); Ashcroft v. Iqbal, 556 U.S. 662 (2009); see also GEOMC Co. v. Calmare Therapeutics, Inc., 918 F.3d 92, 98 (2d Cir. 2019) (holding Twombly/Iqbal applies to pleading affirmative defenses and discussing split). Given the uncertainty over the pleading standard for affirmative defenses, you should conduct jurisdiction-specific research on this issue. Regardless, where possible err on the side of providing enough factual information to meet the heightened standard. Defenses asserted in the answer should be clear and succinct, but must be pleaded with sufficient particularity to give the plaintiff fair notice of the defense asserted.

Further drafting Note to Paragraph 13.

In identifying what affirmative defenses to plead, start by consulting Federal Rule 8(c) that contains a non-exhaustive list. Technically, defenses that are not waived by failure to assert them (for example, lack of subject matter jurisdiction, failure to state a claim) need not be, but often are pleaded. However, note that the Federal Rule 12(b) defenses of lack of personal jurisdiction,

improper venue, or improper service of process are waived if not otherwise part of an initial Federal Rule 12 motion, if any; and if no Federal Rule 12 motion is filed, set them forth as affirmative defenses in the answer. Note that this form does not include counterclaims. To the extent the answer includes counterclaims, review Bankruptcy Rule 7013 for requirements related to counterclaims based on prepetition and postpetition claims.

FIRST DEFENSE

(Failure to State a Claim for Relief)

14. Plaintiff is barred from relief because the Complaint and each of the purported causes of action set forth therein fail to allege facts sufficient to state a plausible claim for relief against Defendant.

SECOND DEFENSE

(Standing)

15. Plaintiff has no standing to raise the claims set forth in Complaint has not suffered harm, and / or will not suffer any imminent and irreparable harm as a result of any alleged actions or conduct by Defendant.

THIRD DEFENSE

(Statute of Limitations)

16. Plaintiff's claim accrued more than [number] years prior to the commencement of this action. This action is, therefore, barred by the applicable [number]-year statute of limitations, [cite to controlling statute].

FOURTH DEFENSE

(Fraud)

Drafting Note to a paragraph 17 Fraud Affirmative Defense.

*Affirmative defenses based on fraud and mistake must be pled with particularity. Fed. R. Civ. P. 9(b). Draft this defense as if you were placing it into a Cause of Action (Count) in a separate complaint. What constitutes sufficient particularity varies with the specifics of each case. When pleading fraud as an affirmative defense, you must identify the person making the misrepresentation, the time, place, and content of the misrepresentation, and the method by which the misrepresentation was communicated. West Am. Ins. Co. v. Mund, 2007 U.S. Dist. LEXIS 31609, at *5–6 (S.D. Ill. Apr. 30, 2007). Conclusory allegations of fraud are insufficient (for example, "defendant was fraudulently induced to sign the contract based on the plaintiff's false and misleading statements"). Fraud allegations should not rely on "information and belief." AEL Fin. LLC v. City Auto Parts of Durham, Inc., 2009 U.S. Dist. LEXIS 77570, at *36–37 (N.D.*

Ill. Aug. 31, 2009). However, you may not need to allege specific facts if they are inaccessible, and you set forth both the basis for your suspicion of fraud and efforts to locate additional information. As a personal note, the Judicial panelist has a colleague who requires, sua sponte, amendments to Affirmative Defenses at the initial status conferences, requiring amplification of assertions respecting fraud, designed specifically to clear out the random clutter of Affirmative Defenses aka the Kitchen Sink approach.

FIFTH DEFENSE

(Release)

18. Plaintiff may not recover against Defendant on the claims in the Complaint because Plaintiff has released such claims in exchange for adequate consideration. [details].

SIXTH DEFENSE

(Setoff)

19. If Plaintiff recovers a judgment against Defendant, the judgment amount must be reduced by [amount] to account for payments made by Defendant for [details]. Moreover, Defendant is entitled to a setoff if additional investigations uncover wrongful conduct and money owed to Defendant.

Drafting note for paragraph 19 (Setoff).

Carefully consult the Bankruptcy Code for setoff requirements in bankruptcy, and know the difference between setoff, Setoff Defense for Debtors, and Setoff versus Recoupment.

SEVENTH DEFENSE

(ACCORD AND SATISFACTION)

20. Plaintiff's claims are barred, in whole or in part, by the accord and satisfaction doctrine. [details].

EIGHTH DEFENSE

(Estoppel)

21. Plaintiff is barred, in whole or in part, by the estoppel doctrine. [details].

Drafting Notes for all Affirmative Defenses. There are many other types of affirmative defenses, such as comparative negligence, res judicata, failure to mitigate, preemption, etc. Carefully research these defenses and if appropriate include them with your answer.

RESERVATION OF RIGHTS AND NON-WAIVER

22. Defendant reserves all rights to assert any and all additional affirmative defenses that may become known through discovery. Defendant also reserves the right to amend or supplement this Answer based on further formal or informal discovery and/or in response to any amendments or supplements to the Complaint made by Plaintiff, and for any such amendments or supplements to the Answer to relate back to the filing of the original Answer.

23. The filing of this pleading is not intended to waive Defendant's (a) right to contest the subject matter or personal jurisdiction of this Bankruptcy Court with respect to Defendant; (b) right to have final orders in non-core matters entered only after de novo review by a United States District Court; and (c) right to have the reference withdrawn by a United States District Court in any matter subject to mandatory or discretionary withdrawal. Accordingly, this pleading should not be construed as a waiver of any such rights.

Drafting Note to Paragraph 23.

Section 157(c)(1) of Title 28 provides that bankruptcy courts may consider noncore proceedings and "submit proposed findings of fact and conclusions of law to the district court for de novo review and entry of judgment," allowing the district court to exercise the ultimate judicial power mandated by the U.S. Constitution. Noncore proceedings exist outside of bankruptcy law and could be brought in a non-bankruptcy court. Noncore proceedings do not implicate bankruptcy law and, as a result, may be appropriately before a district court. The jurisdiction rules are complicated in bankruptcy cases and counsel should generally understand potential jurisdictional issues before filing an answer. Also, Section 157(d) of Title 28 of the U.S. Code governs motions to withdraw the reference.

[NO] CONSENT TO ENTRY OF FINAL ORDERS OR JUDGMENT

24. Defendant [does or does not] not consent to entry of final orders or judgment by the Bankruptcy Court.

Drafting Note to Paragraph 24.

Bankruptcy Rule 7012 was amended in 2016 to remove the requirement that the defendant(s) state whether the proceeding is core or noncore and added the mandate that requires parties to state whether or not they consent to the judge entering a final order or judgment.

Optional Demand for Trial by Jury:

DEMAND FOR TRIAL BY JURY

25. Defendant demands a trial by jury on all issues that are so triable.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for the following relief:

A. That the Complaint be dismissed with prejudice;

B. That judgment be entered in favor of Defendant on all claims and against Plaintiff;

C. That Defendant be awarded its attorneys' fees and costs; and

D. For such other and further relief as this Bankruptcy Court may deem proper.

Dated: [month] [day], [year],

[Law firm]

_____

[signature line]
[address]
[telephone number]
[fax]
[email]

Drafting Note to Signature Block

The signature block must be signed by at least one attorney of record in that attorney's name, or by the party itself (if unrepresented). One defendant may not file a pleading on behalf of its co-defendant, as Federal Rule 11 requires each pleading be signed by the party or its attorney of record. District ad Bankruptcy courts may allow (and in many cases require) an electronic signature. Fed. R. Civ. P. 5(d)(3). Consult your local rules to determine any special signature requirements.

Motions to Dismiss under Rule 12(b)(6) - "Failure to State a Claim"

What is a 12(b)(6) Motion to Dismiss?

The 12(b)(6) motion tests the legal sufficiency of the complaint. The Movant accepts the allegations generally as true, and says, "so what?" They continue to say that as a matter of law, the facts do not state a claim for relief. Therefore, a Rule 12(b)(6) motion is generally a non-speaking motion[1] not based on any evidence.

Rule 12(b)(6) permits a responding party to assert by pre-answer motion the defense that the opposing party has failed "to state a claim upon which relief can be granted." A "claim" is the set of "well-pleaded" factual allegations in a pleading which are intended by the pleader to establish a "plausible" right to relief. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); see Bautista v. Los Angeles County, 216 F.3d 837, 840 (9th Cir. 2000) (a claim is the "aggregate of operative facts which give rise to a right enforceable in the courts"); Gottesman v. GMC, 401 F.2d 510, 512 (2d Cir. 1968) (same); see Fed. R. Civ. P. 8(a).

"To survive a motion to dismiss under Rule 12(b)(6), the complaint must give the defendant fair notice of what the claim is and the ground upon which it rests and allege a plausible entitlement to relief." Gilbert v. City of Chicopee, 915 F.3d 74, 80 (1st Cir. 2019).

What Motions to Dismiss are Not.

A Rule 12(b)(6) motion is often defined by what it is not. A Rule 12(b)(6) motion generally cannot be used to "'resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.'" King v. Rubenstein, 825 F.3d 206, 214 (4th Cir. 2016); see Delker v. MasterCard Int'l, Inc., 21 F.4th 1019, 1024 (8th Cir. 2022). Nor is it proper to address credibility or proof issues in a Rule 12(b)(6) motion. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556 (2007); Jones v. Kirchner, 835 F.3d 74, 80 (D.C. Cir. 2016).

Instead, "the purpose of Federal Rule of Civil Procedure 12(b)(6) 'is to test, in a streamlined fashion, the formal sufficiency of the plaintiff's statement of a claim for relief without resolving a contest regarding its substantive merits.'" Halebian v. Berv, 644 F.3d 122, 130 (2d Cir. 2011); see Kenney v. Helix TCS, Inc., 939 F.3d 1106, 1109 (10th Cir. 2019). In assessing such a motion, "[t]he role of the court . . . is not in any way to evaluate the truth as to what really happened." Doe v. Columbia Univ., 831 F.3d 46, 59 (2d Cir. 2016); Schwake v. Ariz. Bd. of Regents, 967 F.3d 940, 947–48 (9th Cir. 2020).

[1] The phrase "non-speaking motion" is almost antiquated these days, since almost all movants for their written motions are permitted to present oral arguments in bankruptcy court. But, for the uninitiated, it means motions such as motions for summary judgment, motions to dismiss, motions for continuances, motions for protective orders, and the like.

How Broad is a Rule 12(b)(6) Motion to Dismiss?

A Rule 12(b)(6) motion can be brought against all pleadings alleging a claim—a complaint, a crossclaim, a counterclaim, and a third-party claim. Fed. R. Civ. P. 12(b)(6). A Rule 12(b)(6) may also be brought by any party obligated to respond to a claim for relief—a defendant, cross-defendant, counterclaimant, or third-party defendant. Fed. R. Civ. P. 12(b)(6).

A Rule 12(b)(6) can challenge all claims alleged in the pleading, but it need not do so. A partial motion under Rule 12(b)(6) can challenge fewer than all of the claims alleged. See, for example, Barbagallo v. Marcum LLP, 820 F. Supp. 2d 429, 443 (E.D.N.Y. 2011); Ideal Instruments, Inc. v. Rivard Instruments, Inc., 434 F. Supp. 2d 598, 637 (N.D. Iowa 2006).

But the challenge must dispose of an entire claim. A Rule 12(b)(6) motion cannot be used to dismiss specific allegations that do not result in the dismissal of an entire claim. BBL, Inc. v. City of Angola, 809 F.3d 317, 325 (7th Cir. 2015); see McDaniel v. Vilsack, 947 F. Supp. 2d 24, 26 n.1 (D.D.C. 2013) (Rule 12(b)(6) is not an appropriate device to use to eliminate a portion of a claim"); Thompson v. Paul, 657 F. Supp. 2d 1113, 1129 (D. Ariz. 2009); but see CommunityCare HMO, Inc. v. MemberHealth, Inc., 2007 U.S. Dist. LEXIS 582, at *4–5 (N.D. Okla. Jan. 3, 2007) (when there are separate and distinct breaches of contract alleged as part of a single cause of action, a party may move to dismiss those portions of the claim that fail to state a claim for relief).

Timing of the 12(b)(6) Motion to Dismiss

Like all Rule 12(b) motions, a Rule 12(b)(6) motion must "be made before pleading if a responsive pleading is allowed." Fed. R. Civ. P. 12(b). Generally, you are also limited to bringing one pre-answer motion asserting all available Rule 12 defenses or objections—including a Rule 12(b)(6) defense. Fed. R. Civ. P. 12(g)(2).

However, the right to assert failure to state a claim as a defense is not waived and can be asserted in the answer, by a motion for judgment on the pleadings under Rule 12(c), or at trial. Fed. R. Civ. P. 12(h)(2).

How do Courts Analyze at 12(b)(6) Motions to Dismiss?

"[A] Rule 12(b)(6) motion to dismiss need not be granted nor denied in toto but may be granted as to part of a complaint and denied as to the remainder." Decker v. Massey-Ferguson, Ltd., 681 F.2d 111, 115 (2d Cir. 1982); see Chepstow Ltd. v. Hunt, 381 F.3d 1077 (11th Cir.2004) (reversing district court's dismissal of some claims alleged in complaint, while affirming dismissal of other claims).

While there are some exceptions, if there is evidence presented to the court it should not be treated as a 12(b)(6) motion. Those exceptions exists where the court will look outside the pleadings, and still be deciding a 12(b)(6) motion. For example, if the court can take judicial

notice of a fact, or a document, or existence of any situation, under the rules, the court may consider that fact or matter and not convert the motion to a non-speaking motion.

An attachment to a complaint will be considered part of the complaint and they can be considered as well. And if the complaint necessarily and indisputably references a document or matter that's outside the pleading, the parties can bring that to the attention of the court. It will be considered as part of the pleading, such as a contract that's not attached the complaint is necessarily referred to.

Generally, a plaintiff must only meet the liberal pleading standards generally of Rule 8. But, if it is a fraud case governed by Rule 9, more is required.

In determining the sufficiency of the complaint, the court will disregard all conclusory legal allegations or those that fail to state a plausible claim for relief. The Twombly/Iqbal rule addressed below in greater detail is the key. Also, the court will generally accept all well pleaded allegations as true.

The Court will ask whether the complaint, even if well pleaded, fails to state a claim on which relief can be granted. These are important questions addressing important issues as to the sufficiency of the pleading and the sufficiency of the alleged facts. After the court rules, the court may deny, and the defendant is therefore required to answer, the complaint.

The court may (and generally will) grant the motion with leave to amend to see if the plaintiff can provide the necessary allegations to survive a motion dismiss. The court may grant without leave to amend if there is no reasonable amendment that could be made showing there is a triable issue that could be pled. Circuits have allowed (i.e. required) second, third, fourth and more attempts to amend before affirming an order to dismiss with prejudice.

If the plaintiff and the defendant are addressing in the motion process facts outside the record, particularly the defendant references those facts, the court has the option under Rule 12 to convert the motion to a motion for summary judgment and decide the case on grounds under Rule 56.

Note that if such a conversion is taking place at the insistence of the court (sua sponte), the court must give notice to the non-moving party to give it an opportunity to deal with that particular conversion to a summary judgment motion.

The Iqbal-Twombly Standard regarding Pleading with Particularity – The Plausibility Standard

Most prevalent in bankruptcy adversary proceedings involving fraud, to meet the requirements of the Federal Rules, a complaint "must plead facts sufficient to show that her claim has substantive plausibility." Johnson v. City of Shelby, 574 U.S. 10, 12 (2014); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). As such, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009);

O'Shea ex rel. O'Shea v. UPS Ret. Plan, 837 F.3d 67, 77 (1st Cir. 2016); Ray v. Spirit Airlines, Inc., 836 F.3d 1340, 1347–48 (11th Cir. 2016); Vasquez v. Empress Ambulance Serv., Inc., 835 F.3d 267, 271 (2d Cir. 2016); Hunter v. Berkshire Hathaway, Inc., 829 F.3d 357, 361 (5th Cir. 2016); Turner v. City of San Francisco, 788 F.3d 1206, 1210 (9th Cir. 2015).

The court uses a multi-pronged test to determine plausibility. After determining the elements a claimant must plead to state a legally cognizable claim, in reviewing a Rule 12(b)(6) motion, courts general take the following approach:

•First identify, and then disregard, all conclusory legal allegations

•Assume that any remaining "well-pleaded factual allegations" are true

•Determine whether these allegations "plausibly give rise to an entitlement to relief."

Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). As to the final issue—plausibility—"[d]etermining whether a complaint states a plausible claim will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Ashcroft v. Iqbal, 556 U.S. 662, 663–64 (2009); Ryan v. Blackwell, 979 F.3d 519, 524 (6th Cir. 2020); Ebner v. Fresh, Inc., 2016 U.S. App. LEXIS 17561, at *6 (9th Cir. Sept. 27, 2016).

Bankruptcy courts have followed this approach. See, e.g., Carpenters Health v. Mgmt. Res. Sys. Inc., 837 F.3d 378, 382 (3d Cir. 2016); Guadalupe-Baez v. Pesquera, 819 F.3d 509, 514 (1st Cir. 2016); Silha v. ACT, Inc., 807 F.3d 169, 174 (7th Cir. 2015); Hayden v. Paterson, 594 F.3d 150, 161 (2d Cir. 2010). For example, the Ninth Circuit has summarized the applicable test as follows:

"First, to be entitled to the presumption of truth, allegations in a complaint or counterclaim may not simply recite the elements of a cause of action but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively. Second, the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

Iqbal makes it clear that deciding what allegations are conclusory and, therefore, not entitled to a presumption of truth is as critical as deciding whether the properly pleaded factual allegations state a plausible claim for relief. However, whereas the Court in both Iqbal and Twombly made an effort to define plausibility, very little effort was made to define what is a conclusory allegation except for stating that an allegation is conclusory when it merely mirrors an element of a cause of action. Bankruptcy (and District) courts have worked to understand how to apply both "conclusory" and "plausible" in a coherent and consistent manner. See, e.g., Runnion ex rel. Runnion v. Girl Scouts of Greater Chi. & Nw. Ind., 786 F.3d 510, 520 (7th Cir. 2015) ("In the wake of Twombly and Iqbal, there remain considerable uncertainty and variation among the lower courts as to just how demanding pleading standards have become").

Responding to Interrogatories and Request for Production in Federal Court

Introduction

- Importance of Interrogatories and Request for Production in Federal Court
- Relevant Federal Rules of Civil Procedure (FRCP) to be considered:
    - FRCP Rule 33: Interrogatories to Parties
    - FRCP Rule 34: Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes

---

I. Initial Steps Upon Receipt of Interrogatories or Request for Production

A. Review of the Request

1. Determine deadlines for responding
2. Check for compliance with local and federal rules

B. Communication with Client

1. Importance of providing complete and accurate information
2. Potential consequences of non-compliance

C. Preliminary Case Assessment

1. Gauge the scope and implications of the requests
2. Plan strategy for both complying and objecting

II. Interrogatories: Responding Under FRCP Rule 33

A. General Requirements (FRCP Rule 33(a))

1. Number of interrogatories allowed
2. Timeframe for response

B. Objections

1. Objection to Form
2. Relevance

3. Overbroad or Unduly Burdensome
4. Argumentative or Compound
5. Privilege
6. "Fishing Expedition"

C. Providing Answers

1. Each interrogatory must be answered separately and fully (FRCP Rule 33(b)(3))
2. Duties to supplement (FRCP Rule 26(e))

D. Certification by Attorney

1. FRCP Rule 33(b)(5)

III. Request for Production: Responding Under FRCP Rule 34

A. General Requirements (FRCP Rule 34(a))

1. Scope of materials requested
2. Timeframe for response

B. Objections

1. Overly Broad or Unduly Burdensome (FRCP Rule 34(b)(2)(C))
2. Privileged Material
3. Relevance

C. Producing the Documents

1. Format to be followed (FRCP Rule 34(b)(2)(E))
2. Duties to Supplement (FRCP Rule 26(e))

D. Certification by Attorney

1. FRCP Rule 26(g)

IV. Common Tactics & Strategies

A. Using Objections Strategically

1. General vs. Specific Objections

2. Crafting objection language

B. Protective Orders

1. Filing for protective orders to limit scope (FRCP Rule 26(c))

C. Motions to Compel

1. FRCP Rule 37
2. When and how to file

V. Best Practices and Tips

A. Maintain Open Communication with Opposing Counsel

1. Discussing objections
2. Negotiating a resolution

B. Record Keeping

1. Importance of keeping detailed logs of communications and actions taken

C. Review and Update

1. Regularly update and supplement responses

VI. Conclusion

- Summary of key points
- Importance of adhering to federal rules and local practices

---

VII. Appendices

A. Sample Objection Language

B. Checklist for Responding to Interrogatories and Request for Production

C. Important Deadlines

Appendices

A. Sample Objection Language

1. Objection to Form

- "Objection is made to this Interrogatory on the ground that it is not in a form required by Federal Rule of Civil Procedure 33."

2. Relevance

- "Objection is made to this Interrogatory/Request for Production as it seeks information that is not relevant to any party's claim or defense."

3. Overbroad or Unduly Burdensome

- "Objection is made to this Interrogatory/Request for Production as it is overly broad, unduly burdensome, and not limited in scope, contrary to FRCP Rule 34(b)(2)(C) and Rule 26(b)(1)."

4. Argumentative or Compound

- "Objection is made to this Interrogatory on the ground that it is argumentative and/or contains compound questions."

5. Privilege

- "Objection is made to this Interrogatory/Request for Production as it seeks information that is protected by attorney-client privilege, attorney work-product doctrine, or other applicable privileges."

6. "Fishing Expedition"

- "Objection is made to this Interrogatory/Request for Production as it amounts to an improper fishing expedition."

B. Checklist for Responding to Interrogatories and Request for Production

Initial Steps

- ☐ Determine deadlines for responding
- ☐ Confirm compliance with local and federal rules
- ☐ Communicate with the client about the importance of providing accurate information

For Interrogatories (FRCP Rule 33)

- ☐ Verify that the number of interrogatories is within the limit as per FRCP Rule 33(a)
- ☐ List out objections (if any)
- ☐ Draft answers to each interrogatory separately and fully

- ☐ Ensure that the answers are supplemented if necessary (FRCP Rule 26(e))
- ☐ Prepare the attorney certification under FRCP Rule 33(b)(5)

For Request for Production (FRCP Rule 34)

- ☐ Confirm the scope of materials requested is in line with FRCP Rule 34(a)
- ☐ List out objections (if any)
- ☐ Arrange for document production in the required format (FRCP Rule 34(b)(2)(E))
- ☐ Ensure that the documents are supplemented if necessary (FRCP Rule 26(e))
- ☐ Prepare the attorney certification under FRCP Rule 26(g)

Post-Response Activities

- ☐ Log all responses and objections for future reference
- ☐ Keep an open line of communication with opposing counsel
- ☐ Monitor for any motions to compel or for protective orders

---

C. Important Deadlines

1. **Deadline for Responding to Interrogatories:** Under FRCP Rule 33(b)(2), a responding party has 30 days after being served with interrogatories to respond or object.
2. **Deadline for Responding to Request for Production:** According to FRCP Rule 34(b)(2)(A), the party to whom the request is directed has 30 days after service of the request to respond in writing.
3. **Duty to Supplement:** As per FRCP Rule 26(e), a party who has responded to an interrogatory or a request for production must supplement or correct its disclosure in a timely manner if the party learns that the information is incomplete or incorrect.

UNITED STATES BANKRUPTCY COURT
FOR THE [DISTRICT]

In re: [debtor name] et al. Debtors. [plaintiff name], Plaintiff, -against- [defendant name] Defendant.	Chapter 11 Case No. [number] Jointly Administered Adv. Proc. No. [number]

Drafting Note to Caption.

This is the general format for captions used in adversary proceedings commenced in a bankruptcy case. Bankruptcy Rule 7010 states that the caption of each pleading must conform substantially to the appropriate Official Form. For a copy of the caption form, see Official Form 416D, Caption for Use in Adversary Proceeding. Note that this caption is for use in jointly administered cases in a Chapter 11 case. If filing an adversary proceeding in a case where there is a single debtor, the case is not jointly administered, or the case is not a Chapter 11 case, change debtors to singular (in the caption and throughout the form), remove the reference to joint administration, and change the case chapter accordingly. Make sure to check local rules and joint administration order (if applicable) for jurisdictional and case specific caption requirements.

ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT [NAME]

[Defendant name] ("[Defendant Name]" or the "Defendant"), by and through its undersigned counsel, for its answer and affirmative defenses to the [name of complaint] (the "Complaint") filed by [plaintiff name] (the "Plaintiff"), respectfully states as follows:

Drafting Note to Opening Paragraph.

This form is drafted as an adversary proceeding with one plaintiff and one defendant but can be amended or revised depending on the number of parties. The general pleading requirements are governed by Federal Rule 8, made applicable to adversary proceedings pursuant to Bankruptcy Rule 7008 (with modifications). Fed. R. Bankr. P. 7008. The Supreme Court has interpreted pleading rules in deciding motions to dismiss, finding that the court must look at the elements

that must be pled to state a claim and decide whether the complaint contains sufficient factual matter to state a plausible claim for relief. See Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009). Note that this form uses a generic placeholder for the defined term for the defendant's name and counsel should revise the defined term as appropriate. NOTE: THERE ARE NO "DOES" PLEADING IN FEDERAL COURT.

NATURE OF THE ACTION

1. In response to paragraph 1 of the Complaint, Defendant admits that it is a [defendant's entity status with short description]. Except as expressly admitted, Defendant denies each and every allegation of this paragraph.

Drafting Note to Paragraph 1.

The nature of the action, sometimes called a preliminary statement or introduction, gives the court a snapshot of the case and the issues raised. The Federal Rules generally permit the following responses to a complaint's allegations (1) admission, (2), denial, and (3) a statement that the responding party lacks knowledge or information sufficient to form a belief as to the truth of the allegation, which has the effect of a denial. Fed. R. Civ. P. 8(b). Respond to each paragraph of the complaint with a corresponding paragraph answering its allegations with one of these permitted responses. Counsel can also (or may be required by local rule) repeat the allegation contained in the paragraph before the response. Be careful to respond to all the allegations, as failing to respond may result in an allegation being deemed admitted. Fed. R. Civ. P. 8(b)(6). Use Alternate Paragraph 1. for a response that does not admit or deny the allegation.

Alternate Paragraph 1.

The allegations contained in paragraph 1 of the Complaint state conclusions concerning the nature of the case, to which no response is required. To the extent that a response is required, Defendant denies the allegations contained in paragraph 1 of the Complaint.

JURISDICTION AND VENUE

2. The allegations of Paragraph 2 of the Complaint are legal conclusions to which no response is required.

Drafting Note to Jurisdiction and Venue.

The complaint must set forth a short and plain statement of the grounds for the court's jurisdiction over the action. Fed R. Civ. P. 8(a)(1). Though the Federal Rules only require the

basis for the court's subject matter jurisdiction, most attorneys also use this section to plead the basis for the chosen venue. When initiating an adversary proceeding, the plaintiff must state the grounds for the court's jurisdiction. Fed. R. Bankr. P. 7008. The plaintiff must state whether it does or does not consent to the entry of final orders or judgments by the bankruptcy court. Fed. R. Bankr. P. 7008. Note that the Bankruptcy Rules were amended in December 2016. Prior to the amendments, the plaintiff was required to include an allegation in the complaint that the adversary proceeding was core or noncore. Bankruptcy Rule 7008 was amended in 2016 to remove this requirement and add the mandate that requires parties to state whether or not they consent to the judge entering a final order or judgment. The jurisdiction rules are complicated in bankruptcy cases and counsel should generally understand potential jurisdictional issues before filing an answer. You may want to assert that another court has jurisdiction over the adversary proceeding.

PARTIES

3. Defendant admits the allegations in paragraph 3 of the Complaint.

Drafting Note to Paragraph 3.

The complaint must identify the parties. Fed. R. Civ. P. 10(a). True allegations must be admitted. Fed. R. Civ. P. 8(b). However, an admission should not be used if there is doubt as to the allegation's truthfulness after a reasonable inquiry. Carefully scrutinize the allegations before making any admissions, as the court may not permit you to amend the answer later to correct an oversight.

4. Defendant denies the allegations in paragraph 4 of the Complaint.

Drafting Note to Paragraph 4.

Allegations should be denied if counsel believes, after a reasonable inquiry, that they are false. Fed. R. Civ. P. 8. Federal Rule 8(b)(2) states that a denial must fairly respond to the substance of the allegation, and counsel must parse the allegations and only deny those components that counsel and the defendant believe are false.

BACKGROUND

VARIOUS other RESPONSES AVAILABLE:

5. Defendant denies the allegations in paragraph 5 of the Complaint, except that it is admitted that on [date], [allegations admitted, such as defendant entered into a contract with the plaintiff].

6. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 6 of the Complaint.

Drafting Note to paragraph 6.

Counsel may respond to an allegation with a statement that the defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation. Fed. R. Civ. P. 8(b). This response, which is treated as a denial, should be used when counsel does not have access to the material necessary to make an informed answer, such as when the allegations concern information solely within the control of the plaintiff. Do not use this response if your client has knowledge about the allegation or if information about the allegation is readily available, like when it concerns a matter of public record.

7. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 6 of the Complaint.

8. Defendant admits [admitted component]. Defendant lacks knowledge or information sufficient to form a belief as to [component about which defendant lacks knowledge or information]. Defendant denies the remaining allegations contained in paragraph 8.

Drafting Note to Paragraph 8.

You may combine the permitted responses when the paragraph to which you are responding contains multiple or compound allegations. Fed. R. Civ. P. 8(b).

Another example:

9. Defendant admits the allegations in paragraph 9 of the Complaint, except that it denies the qualification implied by the use of the word "only."

COUNT I

([Name of Count])

10. Defendant repeats and restates each and every response to Paragraphs 1 through [9] of the Complaint as if fully set forth herein.

11. The allegations contained in Paragraph 11 of the Complaint state a legal conclusion to which no response is required. To the extent that a response is required, Defendant denies the allegations contained in Paragraph 11 of the Complaint.

Drafting Note to Count I

This sample answer is to a complaint that only contains one count. Counsel should separately answer each count in the same or similar manner used in this form.

12. Except as expressly stated above, Defendant denies each and every allegation in the Complaint.

Drafting Note to Paragraph 12.

Consider including a blanket denial before the defenses section. This makes clear that you deny all allegations unless you have specifically admitted a particular allegation.

AFFIRMATIVE AND OTHER DEFENSES

13. Defendant asserts the following defenses to the Complaint:

Drafting Note to Affirmative and Other Defenses.

Affirmative defenses raise new facts separate from those in the plaintiff's claims for relief and provide a complete defense, even if the allegations in the complaint are true. The defendant that raises an affirmative defense has the burden of proving it. You may only plead affirmative defenses for which you have factual and legal support, so avoid the temptation to plead a laundry list of affirmative defenses. Fed. R. Civ. P. 11(b). Affirmative defense allegations must be stated "in short and plain terms" Fed. R. Civ. P. 8(b)(1)(A). Courts currently disagree about whether affirmative defenses are subject to the heightened pleading standard introduced by the Supreme Court in Twombly and Iqbal, which requires allegations to state a "plausible" claim for relief. See Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007); Ashcroft v. Iqbal, 556 U.S. 662 (2009); see also GEOMC Co. v. Calmare Therapeutics, Inc., 918 F.3d 92, 98 (2d Cir. 2019) (holding Twombly/Iqbal applies to pleading affirmative defenses and discussing split). Given the uncertainty over the pleading standard for affirmative defenses, you should conduct jurisdiction-specific research on this issue. Regardless, where possible err on the side of providing enough factual information to meet the heightened standard. Defenses asserted in the answer should be clear and succinct, but must be pleaded with sufficient particularity to give the plaintiff fair notice of the defense asserted.

Further drafting Note to Paragraph 13.

In identifying what affirmative defenses to plead, start by consulting Federal Rule 8(c) that contains a non-exhaustive list. Technically, defenses that are not waived by failure to assert them (for example, lack of subject matter jurisdiction, failure to state a claim) need not be, but often are pleaded. However, note that the Federal Rule 12(b) defenses of lack of personal jurisdiction,

improper venue, or improper service of process are waived if not otherwise part of an initial Federal Rule 12 motion, if any; and if no Federal Rule 12 motion is filed, set them forth as affirmative defenses in the answer. Note that this form does not include counterclaims. To the extent the answer includes counterclaims, review Bankruptcy Rule 7013 for requirements related to counterclaims based on prepetition and postpetition claims.

FIRST DEFENSE

(Failure to State a Claim for Relief)

14. Plaintiff is barred from relief because the Complaint and each of the purported causes of action set forth therein fail to allege facts sufficient to state a plausible claim for relief against Defendant.

SECOND DEFENSE

(Standing)

15. Plaintiff has no standing to raise the claims set forth in Complaint has not suffered harm, and / or will not suffer any imminent and irreparable harm as a result of any alleged actions or conduct by Defendant.

THIRD DEFENSE

(Statute of Limitations)

16. Plaintiff's claim accrued more than [number] years prior to the commencement of this action. This action is, therefore, barred by the applicable [number]-year statute of limitations, [cite to controlling statute].

FOURTH DEFENSE

(Fraud)

Drafting Note to a paragraph 17 Fraud Affirmative Defense.

*Affirmative defenses based on fraud and mistake must be pled with particularity. Fed. R. Civ. P. 9(b). Draft this defense as if you were placing it into a Cause of Action (Count) in a separate complaint. What constitutes sufficient particularity varies with the specifics of each case. When pleading fraud as an affirmative defense, you must identify the person making the misrepresentation, the time, place, and content of the misrepresentation, and the method by which the misrepresentation was communicated. West Am. Ins. Co. v. Mund, 2007 U.S. Dist. LEXIS 31609, at *5–6 (S.D. Ill. Apr. 30, 2007). Conclusory allegations of fraud are insufficient (for example, "defendant was fraudulently induced to sign the contract based on the plaintiff's false and misleading statements"). Fraud allegations should not rely on "information and belief." AEL Fin. LLC v. City Auto Parts of Durham, Inc., 2009 U.S. Dist. LEXIS 77570, at *36–37 (N.D.*

Ill. Aug. 31, 2009). However, you may not need to allege specific facts if they are inaccessible, and you set forth both the basis for your suspicion of fraud and efforts to locate additional information. As a personal note, the Judicial panelist has a colleague who requires, sua sponte, amendments to Affirmative Defenses at the initial status conferences, requiring amplification of assertions respecting fraud, designed specifically to clear out the random clutter of Affirmative Defenses aka the Kitchen Sink approach.

FIFTH DEFENSE

(Release)

18. Plaintiff may not recover against Defendant on the claims in the Complaint because Plaintiff has released such claims in exchange for adequate consideration. [details].

SIXTH DEFENSE

(Setoff)

19. If Plaintiff recovers a judgment against Defendant, the judgment amount must be reduced by [amount] to account for payments made by Defendant for [details]. Moreover, Defendant is entitled to a setoff if additional investigations uncover wrongful conduct and money owed to Defendant.

Drafting note for paragraph 19 (Setoff).

Carefully consult the Bankruptcy Code for setoff requirements in bankruptcy, and know the difference between setoff, Setoff Defense for Debtors, and Setoff versus Recoupment.

SEVENTH DEFENSE

(ACCORD AND SATISFACTION)

20. Plaintiff's claims are barred, in whole or in part, by the accord and satisfaction doctrine. [details].

EIGHTH DEFENSE

(Estoppel)

21. Plaintiff is barred, in whole or in part, by the estoppel doctrine. [details].

Drafting Notes for all Affirmative Defenses. There are many other types of affirmative defenses, such as comparative negligence, res judicata, failure to mitigate, preemption, etc. Carefully research these defenses and if appropriate include them with your answer.

RESERVATION OF RIGHTS AND NON-WAIVER

22. Defendant reserves all rights to assert any and all additional affirmative defenses that may become known through discovery. Defendant also reserves the right to amend or supplement this Answer based on further formal or informal discovery and/or in response to any amendments or supplements to the Complaint made by Plaintiff, and for any such amendments or supplements to the Answer to relate back to the filing of the original Answer.

23. The filing of this pleading is not intended to waive Defendant's (a) right to contest the subject matter or personal jurisdiction of this Bankruptcy Court with respect to Defendant; (b) right to have final orders in non-core matters entered only after de novo review by a United States District Court; and (c) right to have the reference withdrawn by a United States District Court in any matter subject to mandatory or discretionary withdrawal. Accordingly, this pleading should not be construed as a waiver of any such rights.

Drafting Note to Paragraph 23.

Section 157(c)(1) of Title 28 provides that bankruptcy courts may consider noncore proceedings and "submit proposed findings of fact and conclusions of law to the district court for de novo review and entry of judgment," allowing the district court to exercise the ultimate judicial power mandated by the U.S. Constitution. Noncore proceedings exist outside of bankruptcy law and could be brought in a non-bankruptcy court. Noncore proceedings do not implicate bankruptcy law and, as a result, may be appropriately before a district court. The jurisdiction rules are complicated in bankruptcy cases and counsel should generally understand potential jurisdictional issues before filing an answer. Also, Section 157(d) of Title 28 of the U.S. Code governs motions to withdraw the reference.

[NO] CONSENT TO ENTRY OF FINAL ORDERS OR JUDGMENT

24. Defendant [does or does not] not consent to entry of final orders or judgment by the Bankruptcy Court.

Drafting Note to Paragraph 24.

Bankruptcy Rule 7012 was amended in 2016 to remove the requirement that the defendant(s) state whether the proceeding is core or noncore and added the mandate that requires parties to state whether or not they consent to the judge entering a final order or judgment.

Optional Demand for Trial by Jury:

DEMAND FOR TRIAL BY JURY

25. Defendant demands a trial by jury on all issues that are so triable.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for the following relief:

A. That the Complaint be dismissed with prejudice;

B. That judgment be entered in favor of Defendant on all claims and against Plaintiff;

C. That Defendant be awarded its attorneys' fees and costs; and

D. For such other and further relief as this Bankruptcy Court may deem proper.

Dated: [month] [day], [year],

[Law firm]

_____

[signature line]
[address]
[telephone number]
[fax]
[email]

Drafting Note to Signature Block

The signature block must be signed by at least one attorney of record in that attorney's name, or by the party itself (if unrepresented). One defendant may not file a pleading on behalf of its co-defendant, as Federal Rule 11 requires each pleading be signed by the party or its attorney of record. District ad Bankruptcy courts may allow (and in many cases require) an electronic signature. Fed. R. Civ. P. 5(d)(3). Consult your local rules to determine any special signature requirements.

Faculty

Hon. Scott C. Clarkson is a U.S. Bankruptcy Judge for the Central District of California in Santa Ana and Riverside, appointed on Jan. 20, 2011, and has also sat on the Ninth Circuit Bankruptcy Appellate Panel. Prior to his appointment, Judge Clarkson practiced bankruptcy law and bankruptcy litigation for more than 20 years in Los Angeles, served as chair of the Los Angeles County Bar Association's Commercial Law and Bankruptcy Section from 2008-09, and served on the board of directors of the Los Angeles Bankruptcy Forum and the Los Angeles Financial Lawyers Conference. He also previously served as judicial chair of the California Bankruptcy Forum, on the advisory board of ABI's Bankruptcy Battleground West, and for the Association of Insolvency and Restructuring Advisors' National Conference. Judge Clarkson has served as co-chair of the Legislative Committee of the National Conference of Bankruptcy Judges, and he is currently a member of the ABI Task Force on Veterans and Servicemembers Affairs. He has also served on the board of directors of the Orange County Federal Bar Association and the Orange County Bankruptcy Forum. Judge Clarkson was admitted to the bars of Virginia, the District of Columbia and California. He was admitted to the bar of the U.S. Supreme Court in 1988. Beginning in January 1977, Judge Clarkson was a legislative assistant to a U.S. Congressman serving on the Judiciary Committee of the U.S. House of Representatives, where he was a direct observer and participant in the drafting of the Bankruptcy Code of 1978. He also served on the first board of advisors for the *Norton Annual Survey of Bankruptcy Law* (1979). Judge Clarkson has served as a judicial mediator in various cases over the last 12 years, including Exide Technologies, Inc. (Delaware), Ruby's Diners (Los Angeles), Eagen Avenatti, LLC (Orange County) and the City of San Bernardino, California (San Bernardino). He has presided over dozens of other judicial mediations over his career. Judge Clarkson received his undergraduate degree from Indiana University in Bloomington in 1979 and his J.D. from George Mason University School of Law in 1982, where he was a member and an editor of its law review.

Hon. Heather Z. Cooper is the Chief U.S. Bankruptcy Judge for the District of Vermont in Rutland. Prior to her appointment on March 14, 2022, she began her legal career as a briefing attorney to Justice David L. Richards of the Texas Court of Appeals, Second District. She then entered private practice with the firm of Dunn, Kacal, Adams, Pappas & Law, P.C. in Houston, followed by the firm of Murphy & King, P.C. in Boston. In 2004, Judge Cooper moved to Vermont and clerked for former Bankruptcy Judge Collen A. Brown (her predecessor). In 2006, Judge Cooper joined the firm of Facey Goss & McPhee P.C., a Vermont-based law firm, as an associate and then as a partner. Judge Cooper's practice focused on litigation with extensive and diverse bankruptcy law experience, with more than 20 years of experience in the financial and restructuring industry, representing individual and corporate debtors and creditors in loan workouts and restructurings, liquidations, foreclosures, litigation seizures and receiverships. During her partnership at Facey Goss & McPhee P.C., Judge Cooper served as managing partner and became certified in Consumer Bankruptcy Law by the American Board of Certification. She also served as the Bankruptcy Law Section Chair of the Vermont Bar Association from 2014-18 and on various task forces for the U.S. Bankruptcy Court for the District of Vermont since 2011. Judge Cooper received her B.A. from the University of Houston in 1993 and her J.D. *magna cum laude* from South Texas College of Law in 1998.

Kara Gendron is co-owner of Mott & Gendron Law in Harrisburg, Pa. She has been practicing bankruptcy law exclusively since 2001 and focuses her practice on representing individuals, farmers and small business owners in bankruptcy cases. Ms. Gendron is board certified in Consumer Bankruptcy Law and a certified bankruptcy court mediator. In addition to her private bankruptcy law practice, she is a chapter 7 trustee and a chapter 12 trustee. Ms. Gendron is the Membership Relations Director for ABI's Consumer Bankruptcy Committee and is an advisory board member for ABI's 2023 Consumer Practice Extravaganza (CPEX). She also is a board member of the National Association of Consumer Bankruptcy Attorneys (NACBA) and serves as NACBA's chair for the Circuit Leader Committee. Ms. Gendron is a director for the American Board of Certification (ABC), a board member of the Middle District Bankruptcy Bar Association (MDBBA), an advisory board member for the Middle District of Pennsylvania Bankruptcy Court, and an advisory board member for the *American Bankruptcy Law Journal*, published by the National Conference of Bankruptcy Judges (NCBJ). She also taught bankruptcy law for several years at the Widener School of Law. Ms. Gendron received her B.A. in 1997 from the University of Pennsylvania and her J.D. in 2001 from Pennsylvania State University Dickinson School of Law.

Maurice B. VerStandig is the managing partner of The Belmont Firm in Washington, D.C., and focuses his practice on counseling individuals and companies in all manner of bankruptcy cases. The majority of his practice is focused on representing individuals and companies in the federal bankruptcy courts. Mr. VerStandig has recovered tens of millions of dollars for clients through the formation of consensual plans of reorganization, through contested stay-relief and conversion proceedings, and through adversary claims brought against third parties. He serves as outside bankruptcy counsel to some of the largest and most respected private lenders in the Washington, D.C., metropolitan area, while also maintaining a smaller creditor-focused practice in Florida and Nevada. When not advising secured creditors, Mr. VerStandig has counseled multiple law firms in connection with their own insolvency proceedings, helped a mid-size manufacturing company efficiently liquidate through the chapter 11 process, guided the owner of a historic apartment complex through bankruptcy, and represented trustees in complex adversary proceedings. He also takes on *pro bono* clients and regularly advises charities at no cost. Mr. VerStandig is AV-rated by Martindale-Hubbell, is listed as a "Rising Star" by *Super Lawyers* and sits on the local rules committee for the U.S. Bankruptcy Court for the District of Columbia. He regularly appears in courts throughout the U.S. Mr. VerStandig received his B.A. with honors in 2006 from the University of Wisconsin-Madison and his J.D. *cum laude* from the University of Miami School of Law in 2009.