

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re: Case No.: 2:09-bk-06979-RTBP
ANDREW C BAILEY Chapter: 11
Debtor(s)

ANDREW C. BAILEY Adversary No.: 2:09-ap-01728-RTBP
Plaintiff(s)
v.
THE BANK OF NEW YORK MELLON, FKA THE BANK OF NEW YORK
et al.
Defendant(s)

**NOTICE TO PLAINTIFF NOT REPRESENTED
BY AN ATTORNEY**

You have filed a complaint which has commenced the above numbered adversary proceeding. The next step is for you to serve the summons and a copy of the complaint on all the defendant(s) you have named in the complaint.

I. Issuing the Summons.

The clerk's office will issue the summons and mail it to you. You are required to make **Service of the Summons and Complaint** on each defendant you have named.

IF YOU HAVE NAMED THE UNITED STATES/OR A FEDERAL AGENCY AS A DEFENDANT, YOU ARE REQUIRED TO SERVE THE U.S. ATTORNEY AND THE ATTORNEY GENERAL OF THE UNITED STATES WITH A COPY OF THE COMPLAINT AND THE SUMMONS IN ADDITION TO SERVING THE FEDERAL AGENCY NAMED.

The summons and complaint may be served anywhere in the United States. For service in a foreign country, see Bankruptcy Rule 7004.

A. Service may be made by:

1. Personal Service – By person not less than 18 years of age and not a party to the complaint.
2. First Class Mail – Service may be made on defendants within the United States by first class U.S. mail postage pre-paid, except as stated below. Service by first class mail is also subject to the following specific requirements as stated.
 - a. Mail service on an Insured Depository Institution (banks and other financial institutions whose deposits are federally insured) must be by certified mail addressed to a particular officer of the institution.
 - b. If serving the bankruptcy debtor by mail, the summons and complaint must be mailed to the address stated on the bankruptcy petition or to such other address as the debtor may designate in a writing filed with the bankruptcy court. If the debtor is represented by an attorney, service must also be made on the attorney at the attorney's post-office address.

c. Service on an Agency of the United States must be made to all three of the following addresses.

- (1) Civil Process Clerk
US Attorney, District of Arizona
40 N Central Avenue
Phoenix AZ 85004
- (2) Attorney General of the United States
Dept of Justice, Room B-103
950 Pennsylvania Ave NW
Washington DC 20530-0001
- (3) US Agency Name
Street Address/PO Box
City State Zip Code

d. Service on the United States Trustee by mail must be mailed to the following address.

United States Trustee
230 N First Ave Suite 204
Phoenix AZ 85003

3. Publication – If a party cannot be served by personal service or first class mail, the court may, on motion of the plaintiff, order at least one publication in such manner and form as the court directs (example: newspaper).

B. Time Limit for Service:

1. Service must be made within 14 days from the issuance date of the summons. If the summons is not timely delivered or mailed, a replacement summons (an alias summons) may be issued upon request of the plaintiff, providing that 120 days have not passed since the filing of the adversary complaint.
2. If service of the summons and complaint is not made within 120 days after the filing of the complaint, and good cause cannot be shown why service was not made within that period, the adversary complaint may be dismissed.

C. Certificate of Service. You may complete the Certificate of Service form provided at the end of these instructions and then file it as your Certificate of Service. For the service to be valid, the certificate must show that the following requirements were completed.

1. The date service was made must be stated. If mailed, the date the copy of the complaint and summons was deposited in the mail is the date to be stated.
2. It must state that a copy of the complaint and summons was served or mailed.
3. If service was made by personal delivery of the summons and complaint, then it must state that the person making service is 18 years or older and is not a party to the case.
4. If service was made by mail, then the names and addresses to which the summons and copy of the complaint were mailed must be stated.
5. If service was made by certified mail, then the certification must be attached to the certificate.

II. After Summons and Complaint are Served.

- A. The plaintiff files with the bankruptcy court a Certificate of Service of the summons and complaint.
- B. If the defendant files an answer to the complaint, the court will set a status hearing and will notice the hearing to the interested parties.
- C. The adversary would then go through its course until the judge renders a decision, judgment, or the parties reach a settlement.
- D. If an answer is not filed, the plaintiff may file the proper paperwork to have a default entered against the defendant(s).

III. Entry of Default and Default Judgment Against the Defendant.

You need to prepare and file an Application for Entry of Default and prepare and submit a separate Default Judgment. The clerk's office will enter the default only if the Application for Entry of Default includes the following:

- A. Date the adversary complaint was filed with the court;
- B. Date the summons was signed/issued by the deputy clerk;
- C. Date you served the adversary complaint on the defendant and defendant's attorney;
- D. Date you filed your Certificate of Service with the court;
- E. Statement that no answer has been received within the time limit stated on the summons; and
- F. Statement that the defendant is not in the military service. If the defendant is or may be in the military service, the defendant is afforded certain protections which may prohibit the entry of a default.

IV. Clerk's Entry of Default.

When an Application for Entry of Default is filed, the adversary case will be reviewed and if appropriate, the clerk's office will prepare and mail the Entry of Default to the interested parties. If the application is deficient, the clerk's office will notify the plaintiff regarding the deficiency.

V. Default Judgment.

If the default is entered, then the judge will review the file and either sign the Default Judgment or set the matter for hearing.

Date: January 21, 2010

Address of the Bankruptcy Clerk's Office:

U.S. Bankruptcy Court, Arizona
230 North First Avenue, Suite 101
Phoenix, AZ 85003-1727
Telephone number: (602) 682-4000
www.azb.uscourts.gov

Clerk of the Bankruptcy Court:

Brian D. Karth

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CERTIFICATE OF SERVICE

I, _____ certify that I am, and at all times during the service of process, was not less than 18 years of age. I further certify that the service of the summons and a copy of the complaint was made on _____ by:

- Mail Service: Regular, first class United States mail, postage fully pre-paid, addressed to:

- Personal Service: By leaving the process with the defendant or with an officer or agent of defendant at:

- Residence Service: By leaving the process with the following adult at:

- Certified Mail Service on an Insured Depository Institution: By sending the process by certified mail addressed to the following officer of the defendant at:

Publication: The defendant was served as follows: (Describe briefly)

State Law: The defendant was served pursuant to the laws of the State of _____ as follows: (Describe briefly)

If service of process was made by personal service, residential service, or pursuant to state law, I further certify that I am not a party to the matter concerning which service of process was made.

Under penalty of perjury, I declare that the foregoing is true and correct.

Date: _____

(Signature)

(Print Name)

(Business Address)

(City, State, Zip Code)