

Atlanta Consumer Bankruptcy Skills Training
Written and Oral Advocacy
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Writing Skills Part III:
Writing Principles Demonstrated in Common Consumer Bankruptcy Pleadings

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TOP TEN TIPS

1. Identify the elements necessary to state a claim for relief.

This is the foundation upon which all things are built. In order to draft an effective motion, the writer-attorney must identify each and every element that must be proven to obtain relief. Without this framework, it is difficult, if not impossible, to draft a coherent, logical, and satisfactory motion.

2. Identify the facts necessary to support each of those elements of the claim. Avoid pleading legal conclusions.

Rule 8 of the Federal Rules of Civil Procedure, made applicable by Rule 7008 of the Federal Rules of Bankruptcy Procedure, provides that a claim for relief shall include “a short and plain statement of the claim showing that the pleader is entitled to relief” and that “[e]ach allegation must be simple, concise, and direct.” In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 1964-65 (2007), the Supreme Court explained that, to survive a motion to dismiss under Rule 12(b)(6), a complaint “does not need detailed factual allegations,” but those allegations “must be enough to raise a right to relief above the speculative level.”

It is imperative to plead facts that support the legal conclusion. This is especially true if the court will be considering whether to grant a default judgment or enter a no opposition order. The mere failure of a party to answer does not warrant entry of a default judgment. This is because a defendant can only “admit[] the plaintiff's well-pleaded allegations of fact,” but a defendant “is not held to admit facts that are not well-pleaded or to admit conclusions of law.” *Nishimatsu Constr. Co. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir.1975).

3. Know the Federal Rules of Bankruptcy Procedure and the Bankruptcy Local Rules.

Familiarity with the Bankruptcy Rules and the Bankruptcy Local Rules is critical to bankruptcy practice. The Rules often prescribe requirements as to form and content with respect to common bankruptcy motions. *See, e.g.*, BLR 4001-1 (motion for ex parte relief from stay); BLR 6008-1 and 6008-2 (motions for redemption and avoidance of lien) BLR 9010-5 (motions to withdraw); BLR 9013-4 (motion to shorten time for notice and hearing).

4. State the obvious.

A writer should not presume that the court is as familiar with the facts of the case as she is. Set forth the facts, plainly and simply. This seems like an obvious point, but it is one that bears repeating. It is remarkable how many motions omit relevant and critical information such as the type of collateral or the location of real property. Do not expect the court to fill in the gaps or assume certain facts not properly pleaded.

5. But don't state the unnecessary. Keep it simple!

In the wonderful (and wonderfully short) book, *On Writing Well*, author William Zinsser offers the following anecdote to support his proposition that a writer must keep it simple. During World War II, President Franklin Roosevelt attempted to convert into common English government memos, such as a 1942 blackout order which read:

Such preparations shall be made as will completely obscure all Federal buildings and non-Federal buildings occupied by the Federal government during an air raid for any period of time from visibility by reason of internal or external illumination.

"Tell them," Roosevelt said, "that in buildings where they have to keep the work going to put something across the windows." William Zinsser, *On Writing Well* 8 (6th ed. 1998).

Keep it simple! Eliminate unnecessary wording and legalese. The lawyer-writer has the unfortunate tendency to use overly and unnecessarily formal language in pleadings. Ask yourself, "Would I speak these words in court to explain my position?" Write plainly and simply.

6. Proofread. Do not blindly use form pleadings.

If a writer uses a form pleading as a guide, she should understand each statement in the pleading and include it only if it is applicable and appropriate. A quick "cut and paste" can lead to substantial errors, such as identifying the wrong party or collateral.

7. Be accurate.

Be precise and accurate with the facts. If the debtor has failed to pay three mortgage

payments pre-petition, the more accurate allegation is “The Debtor has failed to pay three mortgage payments pre-petition,” and not “The Debtor is delinquent on his mortgage payments.” Avoid vague terms such as “approximately” or “on or about.” Dollar figures and dates are critical pieces of information.

As a corollary to accuracy, do not ignore difficult facts or contrary law. Nothing undermines an attorney’s reputation quite as quickly as a failure to disclose critical information. At best it appears sloppy; at worst it appears intentionally misleading.

8. Do not overstate or overreach.

Let the facts speak for themselves. Use minimally italics or underlining as emphasis. Avoid entirely the use of bold, all caps, and exclamation points. This is how pro se litigants write. This is not how lawyers write.

9. Take the time to do things right the first time.

One of the wonderful things about bankruptcy is that just about everything is amendable and fixable. This is only helpful if an attorney is not under the pressure of a deadline. But there is nothing worse than being on a deadline (to get approval to sell the house, to foreclose, etc.) and receiving the order denying a motion because it is somehow deficient.

10. Properly serve the motion!

An attorney can draft the perfect motion, but if she does not properly serve it, relief cannot be granted. Read and then re-read Bankruptcy Rules 7004, 9013 and 9014.

The BONUS TIP: Remember the WWWWWH.

In preparing a pleading, focus on the who, what, when, where, why, and how. Think about the following questions when drafting a pleading:

WHO are the parties?

WHO is my audience (e.g., the court? adversary)?

WHAT is the legal issue?

WHAT facts support the elements of the claim?

WHAT must I demonstrate to prevail?

WHEN should the court rule? Is time of the essence? If an emergency, have you pleaded facts to support consideration on an expedited basis? It is also good practice to alert Chambers staff of the fact that an emergency hearing has been requested and the identify a hearing date or provide enough facts from which the court can determine by when the hearing must be held.

WHERE is this argument going? This is really a style issue, but is one to think about when framing the argument. The argument will never be persuasive if you as a writer do not know where you are going.

WHY is this party entitled to the relief requested? WHY is it appropriate for the court to grant the relief requested?

HOW can the court rule in your favor? This is the ultimate argument - showing the court that if it rules for you, it will not get reversed, whereas if it rules against you, it will.

EXAMPLE 1

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN THE MATTER OF	:	
	:	CASE NUMBER: A09-00000
	:	
JOHNNY BLUE	:	
and ALICE BLUE,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtors.	:	BANKRUPTCY CODE
	:	
_____	:	
XYZ CREDIT CORPORATION,	:	
	:	
Plaintiff	:	
	:	
v.	:	ADVERSARY PROCEEDING
	:	NO. 09-0000
ALICE BLUE,	:	
	:	
Defendant.	:	

COMPLAINT TO DETERMINE DISCHARGEABILITY

Comes now XYZ Credit Corporation, Plaintiff herein, and files this complaint to determine dischargeability of debt, and shows the Court as follows:

1.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157(b) and is within the District Court’s jurisdiction pursuant to 28 U.S.C. § 1334(b) as referred by the District Court to this Court pursuant to 28 U.S.C. § 157(a) and Local Rule.

Rule 1.

Rule 8 of the Federal Rules of Civil Procedure, made applicable by Rule 7008 of the Federal Rules of Bankruptcy Procedure, requires an allegation of jurisdiction. Bankruptcy Rule 7008 specifically requires that a complaint contain a statement that the proceeding is core or non-core. The complaint fails to plead this jurisdictional requirement.

2.

The Defendant, Alice Blue, is a debtor in a chapter 13 case, In re Johnny Blue and Alice Blue, case number 09-00000, filed on January 2, 2009, and currently pending before this Court. Venue is appropriate before this court pursuant to 28 U.S.C. 1409(a).

3.

The Plaintiff is a creditor of the Debtor and seeks a determination that its debt is excepted from discharge pursuant to 11 U.S.C. § 523(a)(2)(A) and (C).

4.

On or about January 1, 2006, the Plaintiff issued a line of credit to the Defendant on an open end credit account, account number 123-45-6789. The balance owed by the Defendant at the time of the bankruptcy filing was \$4,500.00.

Rule 6.

Proofread. The account number is personal information that should be redacted except for the final four digits.

5.

The Defendant obtained from Plaintiff money, property, services, or an extension, renewal, or refinancing of credit by means of false pretenses, false representations, and actual fraud.

Rule 2.

Avoid pleading legal conclusions. This is merely a restatement of § 523(a)(2)(A). A defendant cannot admit a conclusion of law.

6.

Every time the Defendant used the credit line, the Defendant represented an ability to pay and an intent to pay. These representations were made with the intent to defraud the Plaintiff.

Rules 1 and 2.

It is questionable whether this paragraph supports a claim for relief under § 523(a)(2). If the court does not follow the “implied representation theory,” the lack of an ability to pay is irrelevant. Further, the Plaintiff has made no specific factual allegations from which actual, subjective fraudulent intent may be inferred.

7.

Within 85 days prior to the date of the bankruptcy filing, the Defendant accumulated charges and/or cash advances in the amount of \$3,000. The majority of the purchases were for luxury goods and services and thus were not necessary for the support or maintenance of the Defendant or her dependents.

Rules 1 and 2.

Know the elements of the claim and allege facts that support these elements. The Plaintiff is presumably invoking § 523(a)(2)(C)'s presumption of nondischargeability with respect to cash advances or charges for luxury goods and services. The problem is that the threshold dollar amounts and the look-back periods for cash advances are not the same as those for luxury charges. Here, the Plaintiff has lumped cash advances and luxury charges together, making it impossible to determine which, if any, of each type of debt is entitled to the presumption prescribed by § 523(a)(2)(C).

Rules 2 and 7.

Avoid naked legal conclusions and be accurate. This allegation is insufficient. Whether something is a “luxury good and service” is a question of fact or at least a mixed question of fact and law, but the complaint alleges no facts showing exactly what was purchased.

Wherefore, the Plaintiff, XYZ Credit Corporation, requests that the Court enter judgment in the amount of \$4,500, plus attorney's fees and costs, against the Defendants, Johnny Blue and Alice Blue, based upon its determination that this debt is excepted from discharge pursuant to § 523(a)(2).

Rules 6 and 7.

Proofread and be precise. The complaint identifies only one Defendant in the caption, Alice Blue. The body of the complaint contains no allegation about the identity of the Defendant. Paragraphs 2 through 7 refer to the Defendant, not to the Defendants. The logical implication is that only Alice is a Defendant. What does the certificate of service say? Is the account only in Alice's name or is it a joint account? If the latter, who charged what?

Respectfully submitted,

Cathleen Collector
Counsel for XYZ Credit Corporation
Bar No. XXXXXX

EXAMPLE 2

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN THE MATTER OF	:	
	:	CASE NUMBER: A09-00000
	:	
JOHNNY BLUE	:	
and ALICE BLUE,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtors.	:	BANKRUPTCY CODE
	:	

MOTION FOR TURNOVER OF VEHICLE

Comes now Johnny and Alice Blue (hereinafter the “Debtors”), through their counsel, and request that this Court compel Speedy Car Credit (“Speedy Car”) to turn over property of the estate to the Debtors and for damages caused by Speedy Car’s prepetition repossession of estate property. In support of this Motion, the Debtors show the following:

<p>Rule 3. A request for turnover of estate property, unless filed by the trustee against the debtor, must be filed as an adversary proceeding. See Fed. R. Bankr. P. 7001(4).</p>
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1.

The Debtor’s chapter 13 case was filed on January 2, 2009. On December 29, 2008, prior to the filing of the Debtors’ petition, Speedy Car willfully and maliciously caused its agent to repossess the Debtors’ 2005 Ford Explorer.

Rules 2 and 8.

This may be overstating the facts. Unless you are reasonably certain that evidence exists to support the allegation that a party acted with a certain intent, it is better to omit such statements. Further, stating the underlying facts that would lead the Court to conclude that the creditor acted willfully and maliciously may be more effective than a blanket legal conclusion.

2.

On January 4, 2009, the Debtors' counsel contacted Speedy Car by telephone and demanded the return of the Debtors' vehicle. Speedy Car refused to return the Debtors' vehicle.

Rules 2 and 4.

No statement is made regarding Speedy Car's knowledge of the Debtors' bankruptcy petition. It is good practice to specifically state all facts necessary for the Court to make the legal conclusion that your client is seeking.

3.

The Debtors have been damaged by the prepetition repossession of their vehicle and the failure of Speedy Car to return the vehicle upon the Debtors' demand.

Wherefore, the Debtors pray that the Court set an expedited hearing on the motion; enter an order compelling Speedy Car to return the Debtors' 2005 Ford Explorer instantler; find that Speedy Car has violated the automatic stay; award the Debtors' their actual damages, including attorney's fees; and grant any other appropriate relief.

Rules 2, 9 and The Bonus Tip.

Buried in the prayer for relief is a request for an expedited hearing. The better practice is to (1) include this request prominently in the title of the motion; (2) plead facts in the motion which establish that time is of the essence; and (3) contact chambers to request an expedited hearing.

Respectfully submitted,

Jim Red
Counsel for the Debtors
Bar No. XXXXXX

EXAMPLE 3

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN THE MATTER OF	:	
	:	CASE NUMBER: A09-0000
	:	
JOHNNY BLUE	:	
and ALICE BLUE,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtors.	:	BANKRUPTCY CODE
	:	

OBJECTION TO CONFIRMATION OF DEBTORS' PLAN

Comes now, Speedy Car Credit (hereinafter "SCC"), through its counsel, and objects to the confirmation of the Debtors' proposed Chapter 13 plan (hereinafter the "Plan"). In support of its Objection, SCC shows the following:

1.

The Debtors filed this Chapter 13 case on January 2, 2009.

2.

The Debtors had a previous case that was dismissed prior to confirmation on December 22, 2008. In the previous case, the Debtors failed to appear at the section 341 meeting and failed to fund their plan payments. The debtors filed the instant case for the sole purpose of preventing SCC from repossessing its collateral. Incredibly, the Debtors made only ONE PAYMENT TO SCC ON THIS LOAN PRIOR TO FILING THE FIRST CASE! BECAUSE THE DEBTORS MADE NO PAYMENTS TO THE TRUSTEE, SCC RECEIVED NO ADEQUATE PROTECTION

PAYMENTS FROM THE DEBTORS IN THE LAST CASE!

Rule 8.
Avoid using all caps and exclamation points.

3.

The Debtors are not proposing to make a distribution under the Plan to SCC equal to the value of its collateral. Debtors purchased the collateral within the 910-day period.

Rules 1, 2, 4 and the Bonus Tip.
At this point, the reader has no idea what type of collateral is at issue here or what the Debtors are proposing in their plan. The reader cannot follow the story. An objection to confirmation, although filed in response to another pleading, should contain enough facts to allow it to stand on its own when read. Cite the statutory basis for objecting to the plan and connect the applicable facts to the statutory requirements.

4.

The proposed rate of interest is insufficient.

Rules 1, 2, 4 and the Bonus Tip.
Take the time to explain why the interest rate is not sufficient and cite the statutory and case authority for your position as to the required rate of interest.

5.

The plan is not feasible.

Rules 2 and 4.
Provide the facts to support a legal conclusion. The writer may assume that it is obvious from Schedules I and J that a plan is not feasible. However, asserting that a plan is not feasible, with no facts, leaves the Court to piece together the writer's legal argument.

6.

The Debtors are delinquent on their Trustee payments.

Rule 7.

Be specific and accurate. From this statement, the Court cannot determine whether the Debtors are merely behind on their plan payments or have not made any payments.

7.

The Debtors has filed this case and the Plan in bad fiath.

Rules 2, 6, and 7.

Avoid pleading legal conclusions without explaining the facts to support the conclusion. Proofread - small mistakes undermine a writer's credibility.

8.

Wherefore, the Debtors pray that the Court deny confirmation of the Debtors' Plan and dismiss the Debtors' case pursuant to section 109(g).

Rule 1.

When seeking relief, such as dismissal under § 109(g), plead the elements that the Court must find in order to grant such relief and explain how the facts (which should be stated above) support these elements.

Respectfully submitted,

Lulu White
Counsel for Speedy Car Credit
Bar No. XXXXXX

EXAMPLE 4

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN THE MATTER OF	:	
	:	CASE NUMBER: A09-00000
	:	
JOHNNY BLUE	:	
and ALICE BLUE,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtors.	:	BANKRUPTCY CODE
	:	

OBJECTION TO CLAIM

Come now Johnny and Alice Blue (hereinafter the “Debtors”), through their counsel, and object to the allowance of Claim Number 9-1, filed by First National Bank of Smithville (hereinafter the “Bank”), to the allowance of Claim Number 3-1, filed by Smithville Electric Company, and to the allowance of Claim Number 7-1, filed by Herb’s Plant Shop. In support of their Objections, the Debtors show the following:

<p>Rule 3. An omnibus claim objection is not allowed in this situation. See Fed. R. Bankr. P. 3007. Each objection should be made by a separate motion.</p>

1.

The Bank filed Claim Number 9-1 on March 3, 2009. Claim Number 9-1 evidences an unsecured claim in the amount of \$3,299. Smithville Electric Company filed Claim Number 3-1 on April 22, 2009. Claim Number 3-1 evidences an unsecured claim in the amount of \$671.42. Herb’s Plant Shop filed Claim Number 7-1 on March 10, 2009. Claim Number 7-1 evidences an unsecured

claim in the amount of \$64.22.

2.

Claim Number 9-1 is not owed.

Rules 1 and 2.

The objection should provide a specific legal basis as to why the claim should be disallowed and facts to support the legal basis for disallowing the claim. This statement is too vague to provide reasonable notice to the claim holder of the basis for seeking disallowance.

3.

Claim Number 3-1 was filed past the bar date.

Rule 4.

The better practice is to state the facts that will allow the Court to conclude that the claim was filed untimely, such as the date of the bar date and the date the claim was filed.

4.

Claim Number 7-1 was paid in full by the Debtors immediately prior to the filing of their petition.

5.

Trustee has distributed \$305 to the Bank in payment of Claim Number 9-1 and \$61 to Smithville Electric Company in payment of Claim Number 3-1.

6.

Wherefore, the Debtors pray that the Court enter an order disallowing Claim Numbers 9-1, 3-1, and 7-1 in their entirety; directing the Trustee to stop funding the claims; and directing the Bank

to refund \$300 to the Trustee and directing Smithville Electric Company to refund \$61 to the Trustee.

Rule 3.

Pursuant to Rule 7001(1) of the Federal Rules of Bankruptcy Procedure, a request for a refund must be made by way of an adversary proceeding. Under amended Rule 3007, a claim objection that seeks a refund of amounts paid is no longer automatically converted into an adversary proceeding.

Respectfully submitted,

Jim Red
Counsel for the Debtors
Bar No. XXXXXX

EXAMPLE 5

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN THE MATTER OF	:	
	:	CASE NUMBER: A09-00000
	:	
JOHNNY BLUE	:	
and ALICE BLUE,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtors.	:	BANKRUPTCY CODE
	:	
_____	:	
UDON'TKNOWME MORTGAGE	:	
CO.,	:	
	:	
Movant	:	
	:	
v.	:	
JOHNNY BLUE	:	
and ALICE BLUE,	:	
	:	
Respondents.	:	

MOTION FOR RELIEF FROM THE AUTOMATIC STAY

Comes now the Movant, UDon'tKnowMe Mortgage Co. ("Movant") and moves the Court for relief from the automatic stay with regard to real property as described herein, and shows the Court as follows:

1.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 that the District Court has referred under 28 U.S.C. § 157(a) and L.R. 83.7, N.D.Ga.

2.

This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).

3.

The Debtors filed a petition for relief under chapter 13 of Title 11 on or about January 2, 2009, and an Order for Relief was entered by this Court.

Rules 5 and 7.

Be precise with the use of words and don't use unnecessary words. Use of the term "on or about" is superfluous and irrelevant in this context. In some contexts the usage of this phrase may be appropriate, such as where there is some question as to when an act occurred. But here is there really any question as to the date the petition was filed?

4.

Pursuant to 11 U.S.C. § 362(a), the entry of the Order for Relief operated as an automatic stay against the rights of the Movant to proceed against the collateral securing a debt owed to Movant.

5.

The Movant holds a first priority security interest pursuant to the grant thereof in the Deed to Secure Debt upon property, located at 100 Main Street, Atlanta, Georgia (the "Property"). The Property is security for a promissory note held by the Movant (the "Note").

Rules 1, 2 and 4.

State the facts and state the obvious. All of the information in this paragraph may be true and accurate, but at this point there is no allegation that the Debtors have an interest in the property or are indebted to Movant.

6.

Pursuant to 11 U.S.C. § 362(d)(1), Movant is entitled to an Order terminating the

automatic stay with respect to the Property for cause, including lack of adequate protection of its interest in the Property.

Rules 1 and 2.

This is a mixed assertion of both law and fact. It restates the statutory language of § 362(d)(1), but it also alleges as a matter of fact that the Movant lacks adequate protection. It does not assert, however, the factual basis for a lack of adequate protection. The movant should allege facts that would support the conclusion that there is a basis for relief from the automatic stay.

7.

Pursuant to 11 U.S.C. § 362(d)(2), the Movant is entitled to an Order terminating the automatic stay with respect to the Property because the Debtor has no equity in the Property.

Rules 1, 2 and 6.

This is a mixed assertion of both law and fact. It restates the statutory language of § 362(d)(2), but it also alleges as a matter of fact that the Movant lacks equity in the property. This assertion raises three issues.

First, the assertion of a lack of equity alone may fail to state a claim for relief. A lack of equity is only one of the elements a movant must prove to obtain relief from the automatic stay pursuant to § 362(d)(2). The Movant has made no assertion regarding § 362(d)(2)'s second requirement that the "property is not necessary to an effective organization."

The second issue is the sufficiency of the factual pleading. A Movant should allege facts that would support the conclusion that it is entitled to relief from the stay. What facts illustrate that the Movant is in jeopardy?

The third issue arises from the use of a form motion. If the attorney uses a form motion that asserts as fact in each and every case that "the debtor has no equity in the Property" and this fact is not true in this particular case, the attorney is in potential violation of Rule 9011 of the Federal Rules of Bankruptcy Procedure.

8.

The unpaid principal balance is \$195,999 with interest due thereon at an annual rate of 7.5%. A copy of the note is attached as Exhibit A.

Rule 6.

Proofread. If you make reference to exhibits, attach the exhibits. This error is remarkably common.

9.

The Debtors have defaulted on post-petition payments owed to Movant pursuant to the Note.

Rule 7.

Be specific. The exact number of payments and the amounts owed are relevant facts that go to the issue of “cause” for relief from the stay.

Wherefore, Movant requests the following relief:

- (1) That this Court issue an Order terminating the automatic stay with respect to the Property so that Movant may exercise its non-bankruptcy rights with respect to the Property; and
- (2) That Movant be awarded attorney’s fees and expenses pursuant to 11 U.S.C. § 506(b).

Rule 3.

The Movant has not requested that the Court waive the requirements of Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure so that the terms of an Order are immediately effective. If not requested, and unless the Debtor affirmatively consents to the waiver, any order granting the motion for relief from stay will be stayed for 10 days.

Respectfully requested,

Bob Brown
Attorney for Movant
Bar No. XXXXXX

EXAMPLE 6

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN THE MATTER OF :
 :
 : CASE NUMBER: A09-00000
 :
 :
 JOHNNY BLUE :
 and ALICE BLUE, :
 :
 : IN PROCEEDINGS UNDER
 : CHAPTER 13 OF THE
 Debtors. : BANKRUPTCY CODE
 :
 :

MOTION TO WITHDRAW AS COUNSEL FOR DEBTORS

Comes now Jim Red, counsel for Joe Jones, and files this “Motion to Withdraw as Counsel for the Debtors” and shows:

Rule 6.
Proofread. This is the wrong debtor. When using a form, particularly a similar type of document from a different case, make certain that you redact information not pertinent to the current case and insert the appropriate information about the current case.

1.

The Debtor’s chapter 13 case was filed on January 2, 2009, and confirmed on May 1, 2009.

2.

The undersigned seeks to withdraw from representation of the Debtors in this matter.

Rule 7.
The allegation is problematic because it is vague. The attorney has failed to state a reason for withdrawal. Within the bounds of the attorney-client privilege, the attorney should state a factual basis for seeking withdrawal from representation.

3.

By service of this motion, the undersigned gives notice to the Debtors of his intent to withdraw.

Rule 3.

Know the local rules. BLR 9010-5(b), NDGa, provides a specific procedure for seeking to withdraw as counsel. The first requirement is notifying the client in writing that in ten days from the date the notice is given, the attorney intends to ask for permission to withdraw. The notice may be delivered personally or mailed to the client's last known address. This notice, which may be a letter, must contain a number of important disclosures specified in the rule. And a copy MUST be attached to the motion.

4.

The Debtors have the right to object to this motion within 10 days.

Rule 3.

This statement of procedure is only partially correct and is in the wrong place. BLR 9010-5(b) requires a notice separate from the motion stating that the client has 10 days from service of the motion to file an objection and providing the address of the Bankruptcy Clerk's office where the objection may be filed.

Wherefore, the undersigned requests that the Court issue an Order permitting the undersigned to withdraw as counsel of record and do whatever is just.

Respectfully submitted,

Jim Red
Counsel for the Debtors
Bar No. XXXXXX