

JUDICIAL LIEN AVOIDANCE ISSUES

Judicial Liens should be filed in accordance with the Bankruptcy Code and Rules as well as Exhibit A to SC LBR 3015-1 and SC LBR 4003-2.

To further 11 U.S.C. § 522(f)(2)(B), all liens must be examined in the context of all other unavoids and unavoidable liens. Accordingly, all liens should be dealt within one motion, or motions submitted concurrently, clearly indicating the priority of the lien to be avoided and that senior unavoids liens are included in the calculation.

Motions are to be avoided from junior to senior. Accordingly, begin with the most junior lien and determine whether it is avoidable in its entirety. All senior judicial liens would be included in the calculation. If it is avoidable, then it is appropriate to proceed to the next junior lien to determine its avoidability. The junior lien just avoided would not be included in the calculation, but all senior judicial liens would be included. If it is not avoidable or only avoidable in part, then all senior liens would be unavoidable and there is no need to do any further calculation.

In reviewing motions to avoid judicial liens, the Judges also examine, although not exclusively, whether:

- Debtor owns real property upon which the judgment has attached or whether a judgment has attached to Debtor's personal property.
- Debtor has claimed an exemption on Schedule C for the applicable property.
- Debtor's figures provided on the motion are consistent with the Schedules and Statement of Financial Affairs.
- Judgment is listed in Debtor's Schedules and Statement of Financial Affairs.
- Total amount of all other liens on property includes all mortgages and/or senior judicial liens, where applicable (see Exhibits A and C to SC LBR 4003-2).
- If it is necessary to file a motion to avoid a judicial lien in a closed case, a motion to reopen the case is not necessary. Likewise, if it is necessary to amend a schedule in direct relation to a lien avoidance issue, a motion to reopen may not be necessary. Nothing herein should be construed to waive any notice requirements with respect to the motion to avoid judicial lien or amendment of schedules.

If, despite demonstrated efforts, counsel feels that one-on-one training would assist counsel in the accuracy of his/her submission of motions to avoid judicial liens, counsel may contact chambers for an appointment with one of the Judge's law clerks.