

Subdivision (e) is amended to conform to the 1986 amendment to §707(b) of the Code which permits the United States trustee to make a motion to dismiss a case for substantial abuse. The time limit for such a motion is added by this subdivision. In general, the facts that are the basis for a motion to dismiss under §707(b) exist at the time the case is commenced and usually can be discovered early in the case by reviewing the debtor's schedules and examining the debtor at the meeting of creditors. Since dismissal for substantial abuse has the effect of denying the debtor a discharge in the chapter 7 case based on matters which may be discovered early, a motion to dismiss under §707(b) is analogous to an objection to discharge pursuant to Rule 4004 and, therefore, should be required to be made within a specified time period. If matters relating to substantial abuse are not discovered within the time period specified in subdivision (e) because of the debtor's false testimony, refusal to obey a court order, fraudulent schedules or other fraud, and the debtor receives a discharge, the debtor's conduct may constitute the basis for revocation of the discharge under §727(d) and (e) of the Code.

NOTES OF ADVISORY COMMITTEE ON RULES—1993
AMENDMENT

Subdivision (d) is amended to clarify that the date of the filing of a notice of conversion in a chapter 12 or chapter 13 case is treated as the date of the conversion order for the purpose of applying Rule 1019. Other amendments are stylistic and make no substantive change.

COMMITTEE NOTES ON RULES—1999 AMENDMENT

Subdivision (b)(3), which provides that notice of dismissal for failure to pay the filing fee shall be sent to all creditors within 30 days after the dismissal, is deleted as unnecessary. Rule 2002(f) provides for notice to creditors of the dismissal of a case.

Rule 2002(a) and this rule currently require notice to all creditors of a hearing on dismissal of a voluntary chapter 7 case for the debtor's failure to file a list of creditors, schedules, and statement of financial affairs within the time provided in §707(a)(3) of the Code. A new subdivision (c) is added to provide that the United States trustee, who is the only entity with standing to file a motion to dismiss under §707(a)(3) or §1307(c)(9), is required to serve the motion on only the debtor, the trustee, and any other entities as the court directs. This amendment, and the amendment to Rule 2002, will have the effect of avoiding the expense of sending notices of the motion to all creditors in a chapter 7 case.

New subdivision (f) is the same as current subdivision (d), except that it provides that a motion to suspend all proceedings in a case or to dismiss a case for substantial abuse of chapter 7 under §707(b) is governed by Rule 9014.

Other amendments to this rule are stylistic or for clarification.

GAP Report on Rule 1017. No changes since publication, except for stylistic changes in Rule 1017(e) and (f).

COMMITTEE NOTES ON RULES—2000 AMENDMENT

This rule is amended to permit the court to grant a timely request filed by the United States trustee for an extension of time to file a motion to dismiss a chapter 7 case under §707(b), whether the court rules on the request before or after the expiration of the 60-day period.

Reporter's Note on Text of Rule 1017(e). The above text of Rule 1017(e) is not based on the text of the rule in effect on this date. The above text embodies amendments that have been promulgated by the Supreme Court in April 1999 and, unless Congress acts with respect to the amendments, will become effective on December 1, 1999.

GAP Report on Rule 1017(e). No changes since publication.

COMMITTEE NOTES ON RULES—2008 AMENDMENT

Subdivision (e) is amended to implement the 2005 amendments to §707 of the Code. These statutory

amendments permit conversion of a chapter 7 case to a case under chapter 11 or 13, change the basis for dismissal or conversion from "substantial abuse" to "abuse," authorize parties other than the United States trustee to bring motions under §707(b) under certain circumstances, and add §707(c) to create an explicit ground for dismissal based on the request of a victim of a crime of violence or drug trafficking. The conforming amendments to subdivision (e) preserve the time limits already in place for §707(b) motions, except to the extent that §704(b)(2) sets the deadline for the United States trustee to act. In contrast to the grounds for a motion to dismiss under §707(b)(2), which are quite specific, the grounds under §707(b)(1) and (3) are very general. Therefore, to enable the debtor to respond, subdivision (e) requires that motions to dismiss under §707(b)(1) and (3) state with particularity the circumstances alleged to constitute abuse.

Changes Made After Publication. No changes were made after publication.

Rule 1018. Contested Involuntary Petitions; Contested Petitions Commencing Ancillary Cases; Proceedings to Vacate Order for Relief; Applicability of Rules in Part VII Governing Adversary Proceedings

The following rules in Part VII apply to all proceedings relating to a contested involuntary petition, to proceedings relating to a contested petition commencing a case ancillary to a foreign proceeding, and to all proceedings to vacate an order for relief: Rules 7005, 7008-7010, 7015, 7016, 7024-7026, 7028-7037, 7052, 7054, 7056, and 7062, except as otherwise provided in Part I of these rules and unless the court otherwise directs. The court may direct that other rules in Part VII shall also apply. For the purposes of this rule a reference in the Part VII rules to adversary proceedings shall be read as a reference to proceedings relating to a contested involuntary petition, or contested ancillary petition, or proceedings to vacate an order for relief. Reference in the Federal Rules of Civil Procedure to the complaint shall be read as a reference to the petition.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

The rules in Part VII to which this rule refers are adaptations of the Federal Rules of Civil Procedure for the purpose of governing the procedure in adversary proceedings in cases under the Code. See the Note accompanying Rule 7001 *infra*. Because of the special need for dispatch and expedition in the determination of the issues in an involuntary petition, see *Acme Harvester Co. v. Beekman Lumber Co.*, 222 U.S. 300, 309 (1911), the objective of some of the Federal Rules of Civil Procedure and their adaptations in Part VII to facilitate the settlement of multiple controversies involving many persons in a single lawsuit is not compatible with the exigencies of bankruptcy administration. See *United States F. & G. Co. v. Bray*, 225 U.S. 205, 218 (1912). For that reason Rules 7013, 7014 and 7018-7023 will rarely be appropriate in a proceeding on a contested petition.

Certain terms used in the Federal Rules of Civil Procedure have altered meanings when they are made applicable in cases under the Code by these rules. See Rule 9002 *infra*. This Rule 1018 requires that the terms "adversary proceedings" when used in the rules in Part VII and "complaint" when used in the Federal Rules of Civil Procedure be given altered meanings when they are made applicable to proceedings relating to a contested petition or proceedings to vacate any order for relief. A motion to vacate an order for relief, whether or not made on a petition that was or could have been

contested, is governed by the rules in Part VII referred to in this Rule 1018.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

Rule 1018 is amended to include within its terms a petition commencing an ancillary case when it is contested. This provision was formerly included in Rule 1003(e)(4).

Although this rule does not contain an explicit authorization for the entry of an order for relief when a debtor refuses to cooperate in discovery relating to a contested involuntary petition, the court has ample power under Rule 37(b) F.R.Civ.P., as incorporated by Rule 7037, to enter an order for relief under appropriate circumstances. Rule 37(b) authorizes the court to enter judgment by default or an order that “facts shall be taken as established.”

Rule 1019. Conversion of a Chapter 11 Reorganization Case, Chapter 12 Family Farmer’s Debt Adjustment Case, or Chapter 13 Individual’s Debt Adjustment Case to a Chapter 7 Liquidation Case

When a chapter 11, chapter 12, or chapter 13 case has been converted or reconverted to a chapter 7 case:

(1) *Filing of Lists, Inventories, Schedules, Statements.*

(A) Lists, inventories, schedules, and statements of financial affairs theretofore filed shall be deemed to be filed in the chapter 7 case, unless the court directs otherwise. If they have not been previously filed, the debtor shall comply with Rule 1007 as if an order for relief had been entered on an involuntary petition on the date of the entry of the order directing that the case continue under chapter 7.

(B) If a statement of intention is required, it shall be filed within 30 days after entry of the order of conversion or before the first date set for the meeting of creditors, whichever is earlier. The court may grant an extension of time for cause only on written motion filed, or oral request made during a hearing, before the time has expired. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.

(2) *New Filing Periods.* A new time period for filing a motion under §707(b) or (c), a claim, a complaint objecting to discharge, or a complaint to obtain a determination of dischargeability of any debt shall commence under Rules 1017, 3002, 4004, or 4007, but a new time period shall not commence if a chapter 7 case had been converted to a chapter 11, 12, or 13 case and thereafter reconverted to a chapter 7 case and the time for filing a motion under §707(b) or (c), a claim, a complaint objecting to discharge, or a complaint to obtain a determination of the dischargeability of any debt, or any extension thereof, expired in the original chapter 7 case.

(3) *Claims Filed Before Conversion.* All claims actually filed by a creditor before conversion of the case are deemed filed in the chapter 7 case.

(4) *Turnover of Records and Property.* After qualification of, or assumption of duties by the chapter 7 trustee, any debtor in possession

or trustee previously acting in the chapter 11, 12, or 13 case shall, forthwith, unless otherwise ordered, turn over to the chapter 7 trustee all records and property of the estate in the possession or control of the debtor in possession or trustee.

(5) *Filing Final Report and Schedule of Postpetition Debts.*

(A) *Conversion of Chapter 11 or Chapter 12 Case.* Unless the court directs otherwise, if a chapter 11 or chapter 12 case is converted to chapter 7, the debtor in possession or, if the debtor is not a debtor in possession, the trustee serving at the time of conversion, shall:

(i) not later than 14 days after conversion of the case, file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim; and

(ii) not later than 30 days after conversion of the case, file and transmit to the United States trustee a final report and account;

(B) *Conversion of Chapter 13 Case.* Unless the court directs otherwise, if a chapter 13 case is converted to chapter 7,

(i) the debtor, not later than 14 days after conversion of the case, shall file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim; and

(ii) the trustee, not later than 30 days after conversion of the case, shall file and transmit to the United States trustee a final report and account;

(C) *Conversion After Confirmation of a Plan.* Unless the court orders otherwise, if a chapter 11, chapter 12, or chapter 13 case is converted to chapter 7 after confirmation of a plan, the debtor shall file:

(i) a schedule of property not listed in the final report and account acquired after the filing of the petition but before conversion, except if the case is converted from chapter 13 to chapter 7 and §348(f)(2) does not apply;

(ii) a schedule of unpaid debts not listed in the final report and account incurred after confirmation but before the conversion; and

(iii) a schedule of executory contracts and unexpired leases entered into or assumed after the filing of the petition but before conversion.

(D) *Transmission to United States Trustee.* The clerk shall forthwith transmit to the United States trustee a copy of every schedule filed pursuant to Rule 1019(5).

(6) *Postpetition Claims; Preconversion Administrative Expenses; Notice.* A request for payment of an administrative expense incurred before conversion of the case is timely filed under §503(a) of the Code if it is filed before conversion or a time fixed by the court. If the request is filed by a governmental unit, it is timely if it is filed before conversion or within