

motion for an extension of time for filing a complaint objecting to discharge be filed before the time has expired.

Other amendments to this rule are stylistic.

GAP Report on Rule 4004. No changes since publication.

COMMITTEE NOTES ON RULES—2000 AMENDMENT

Subdivision (c) is amended so that a discharge will not be granted while a motion requesting an extension of time to file a motion to dismiss the case under §707(b) is pending. Other amendments are stylistic.

GAP Report on Rule 4004(c). No changes since publication except for style revisions.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

Subdivision (c)(1)(D) is amended to provide that the filing of a motion to dismiss under §707 of the Bankruptcy Code postpones the entry of the discharge. Under the present version of the rule, only motions to dismiss brought under §707(b) cause the postponement of the discharge. This amendment would change the result in cases such as *In re Tanenbaum*, 210 B.R. 182 (Bankr. D. Colo. 1997).

Changes Made After Publication and Comments. No changes were made.

COMMITTEE NOTES ON RULES—2008 AMENDMENT

Subdivision (c)(1)(G) is amended to reflect the fee waiver provision in 28 U.S.C. §1930, added by the 2005 amendments.

Subdivision (c)(1)(H) is new. It reflects the 2005 addition to the Code of §§727(a)(11) and 1328(g), which require that individual debtors complete a course in personal financial management as a condition to the entry of a discharge. Including this requirement in the rule helps prevent the inadvertent entry of a discharge when the debtor has not complied with this requirement. If a debtor fails to file the required statement regarding a personal financial management course, the clerk will close the bankruptcy case without the entry of a discharge.

Subdivision (c)(1)(I) is new. It reflects the 2005 addition to the Code of §727(a)(12). This provision is linked to §522(q). Section 522(q) limits the availability of the homestead exemption for individuals who have been convicted of a felony or who owe a debt arising from certain causes of action within a particular time frame. The existence of reasonable cause to believe that §522(q) may be applicable to the debtor constitutes grounds for withholding the discharge.

Subdivision (c)(1)(J) is new. It accommodates the deadline for filing a reaffirmation agreement established by Rule 4008(a).

Subdivision (c)(1)(K) is new. It reflects the 2005 revisions to §524 of the Code that alter the requirements for approval of reaffirmation agreements. Section 524(m) sets forth circumstances under which a reaffirmation agreement is presumed to be an undue hardship. This triggers an obligation to review the presumption and may require notice and a hearing. Subdivision (c)(1)(J) has been added to prevent the discharge from being entered until the court approves or disapproves the reaffirmation agreement in accordance with §524(m).

Subdivision (c)(1)(L) is new. It implements §1228(a) of Public Law Number 109-8, an uncodified provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which prohibits entry of a discharge unless required tax documents have been provided to the court.

Subdivision (c)(3) is new. It postpones the entry of the discharge of an individual debtor in a case under chapter 11, 12, or 13 if there is a question as to the applicability of §522(q) of the Code. The postponement provides an opportunity for a creditor to file a motion to limit the debtor's exemption under that provision.

Other changes are stylistic.

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

COMMITTEE NOTES ON RULES—2009 AMENDMENT

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

Rule 4005. Burden of Proof in Objecting to Discharge

At the trial on a complaint objecting to a discharge, the plaintiff has the burden of proving the objection.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule does not address the burden of going forward with the evidence. Subject to the allocation by the rule of the initial burden of producing evidence and the ultimate burden of persuasion, the rule leaves to the courts the formulation of rules governing the shift of the burden of going forward with the evidence in the light of considerations such as the difficulty of proving the nonexistence of a fact and of establishing a fact as to which the evidence is likely to be more accessible to the debtor than to the objector. *See, e.g., In re Haggerty*, 165 F.2d 977, 979-80 (2d Cir. 1948); *Federal Provision Co. v. Ershovskiy*, 94 F.2d 574, 575 (2d Cir. 1938); *In re Riceputo*, 41 F. Supp. 926, 927-28 (E.D.N.Y. 1941).

Rule 4006. Notice of No Discharge

If an order is entered: denying a discharge; revoking a discharge; approving a waiver of discharge; or, in the case of an individual debtor, closing the case without the entry of a discharge, the clerk shall promptly notify all parties in interest in the manner provided by Rule 2002.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 23, 2008, eff. Dec. 1, 2008.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

The suspension by §108(c) of the Code of the statute of limitations affecting any debt of a debtor terminates within 30 days after the debtor is denied a discharge or otherwise loses his right to a discharge. If, however, a debtor's failure to receive a discharge does not come to the attention of his creditors until after the statutes of limitations have run, the debtor obtains substantially the same benefits from his bankruptcy as a debtor who is discharged.

This rule requires the clerk to notify creditors if a debtor fails to obtain a discharge because a waiver of discharge was filed under §727(a)(10) or as a result of an order denying or revoking the discharge under §727(a) or (d).

COMMITTEE NOTES ON RULES—2008 AMENDMENT

This amendment was necessary because the 2005 amendments to the Code require that individual debtors in a chapter 7 or 13 case complete a course in personal financial management as a condition to the entry of a discharge. If the debtor fails to complete the course, the case may be closed and no discharge will be entered. Reopening the case is governed by §350 and Rule 5010. The rule is amended to provide notice to parties in interest, including the debtor, that no discharge was entered.

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

Rule 4007. Determination of Dischargeability of a Debt

(a) PERSONS ENTITLED TO FILE COMPLAINT. A debtor or any creditor may file a complaint to obtain a determination of the dischargeability of any debt.

(b) TIME FOR COMMENCING PROCEEDING OTHER THAN UNDER §523(c) OF THE CODE. A complaint other than under §523(c) may be filed at any time. A case may be reopened without payment of an additional filing fee for the purpose of filing a complaint to obtain a determination under this rule.

(c) TIME FOR FILING COMPLAINT UNDER §523(c) IN A CHAPTER 7 LIQUIDATION, CHAPTER 11 REORGANIZATION, CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT CASE, OR CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASE; NOTICE OF TIME FIXED. Except as otherwise provided in subdivision (d), a complaint to determine the dischargeability of a debt under §523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under §341(a). The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided in Rule 2002. On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

(d) TIME FOR FILING COMPLAINT UNDER §523(a)(6) IN A CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASE; NOTICE OF TIME FIXED. On motion by a debtor for a discharge under §1328(b), the court shall enter an order fixing the time to file a complaint to determine the dischargeability of any debt under §523(a)(6) and shall give no less than 30 days' notice of the time fixed to all creditors in the manner provided in Rule 2002. On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

(e) APPLICABILITY OF RULES IN PART VII. A proceeding commenced by a complaint filed under this rule is governed by Part VII of these rules.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 26, 1999, eff. Dec. 1, 1999; Apr. 23, 2008, eff. Dec. 1, 2008.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule prescribes the procedure to be followed when a party requests the court to determine dischargeability of a debt pursuant to §523 of the Code.

Although a complaint that comes within §523(c) must ordinarily be filed before determining whether the debtor will be discharged, the court need not determine the issues presented by the complaint filed under this rule until the question of discharge has been determined under Rule 4004. A complaint filed under this rule initiates an adversary proceeding as provided in Rule 7003.

Subdivision (b) does not contain a time limit for filing a complaint to determine the dischargeability of a type of debt listed as nondischargeable under §523(a)(1), (3), (5), (7), (8), or (9). Jurisdiction over this issue on these debts is held concurrently by the bankruptcy court and any appropriate nonbankruptcy forum.

Subdivision (c) differs from subdivision (b) by imposing a deadline for filing complaints to determine the issue of dischargeability of debts set out in §523(a)(2),

(4) or (6) of the Code. The bankruptcy court has exclusive jurisdiction to determine dischargeability of these debts. If a complaint is not timely filed, the debt is discharged. See §523(c).

Subdivision (e). The complaint required by this subdivision should be filed in the court in which the case is pending pursuant to Rule 5005.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

Subdivision (a) is amended to delete the words "with the court" as unnecessary. See Rules 5005(a) and 9001(3).

Subdivision (c) is amended to apply in chapter 12 cases the same time period that applies in chapter 7 and 11 cases for filing a complaint under §523(c) of the Code to determine dischargeability of certain debts. Under §1228(a) of the Code, a chapter 12 discharge does not discharge the debts specified in §523(a) of the Code.

COMMITTEE NOTES ON RULES—1999 AMENDMENT

Subdivision (c) is amended to clarify that the deadline for filing a complaint to determine the dischargeability of a debt under §523(c) of the Code is 60 days after the first date set for the meeting of creditors, whether or not the meeting is held on that date. The time for filing the complaint is not affected by any delay in the commencement or conclusion of the meeting of creditors. This amendment does not affect the right of any party in interest to file a motion for an extension of time to file a complaint to determine the dischargeability of a debt in accordance with this rule.

The substitution of the word "filed" for "made" in the final sentences of subdivisions (c) and (d) is intended to avoid confusion regarding the time when a motion is "made" for the purpose of applying these rules. See, e.g., *In re Coggin*, 30 F.3d 1443 (11th Cir. 1994). As amended, these subdivisions require that a motion for an extension of time be *filed* before the time has expired.

The other amendments to this rule are stylistic.

GAP Report on Rule 4007. No changes since publication, except for stylistic changes in the heading of Rule 4007(d).

COMMITTEE NOTES ON RULES—2008 AMENDMENT

Subdivision (c) is amended because of the 2005 amendments to §1328(a) of the Code. This revision expands the exceptions to discharge upon completion of a chapter 13 plan. Subdivision (c) extends to chapter 13 the same time limits applicable to other chapters of the Code with respect to the two exceptions to discharge that have been added to §1328(a) and that are within §523(c).

The amendment to subdivision (d) reflects the 2005 amendments to §1328(a) that expands the exceptions to discharge upon completion of a chapter 13 plan, including two out of three of the provisions that fall within §523(c). However, the 2005 revisions to §1328(a) do not include a reference to §523(a)(6), which is the third provision to which §523(c) refers. Thus, subdivision (d) is now limited to that provision.

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

Rule 4008. Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement

(a) FILING OF REAFFIRMATION AGREEMENT. A reaffirmation agreement shall be filed no later than 60 days after the first date set for the meeting of creditors under §341(a) of the Code. The reaffirmation agreement shall be accompanied by a cover sheet, prepared as prescribed by the appropriate Official Form. The court may, at any time and in its discretion, enlarge the time to file a reaffirmation agreement.

(b) STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT. The debtor's statement required