

**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

under §524(k)(6)(A) of the Code shall be accompanied by a statement of the total income and expenses stated on schedules I and J. If there is a difference between the total income and expenses stated on those schedules and the statement required under §524(k)(6)(A), the statement required by this subdivision shall include an explanation of the difference.

(As amended Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 2008, eff. Dec. 1, 2008; Mar. 26, 2009, eff. Dec. 1, 2009.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Section 524(d) of the Code requires the court to hold a hearing to inform an individual debtor concerning the granting or denial of discharge and the law applicable to reaffirmation agreements.

The notice of the §524(d) hearing may be combined with the notice of the meeting of creditors or entered as a separate order.

The expression “not more than” contained in the first sentence of the rule is for the explicit purpose of requiring the hearing to occur within that time period and cannot be extended.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

This rule is changed to conform to §524(d) of the Code as amended in 1986. A hearing under §524(d) is not mandatory unless the debtor desires to enter into a reaffirmation agreement.

COMMITTEE NOTES ON RULES—2008 AMENDMENT

This rule is amended to establish a deadline for filing reaffirmation agreements. The Code sets out a number of prerequisites to the enforceability of reaffirmation agreements. Among those requirements, §524(k)(6)(A) provides that each reaffirmation agreement must be accompanied by a statement indicating the debtor’s ability to make the payments called for by the agreement. In the event that this statement reflects an insufficient income to allow payment of the reaffirmed debt, §524(m) provides that a presumption of undue hardship arises, allowing the court to disapprove the reaffirmation agreement, but only after a hearing conducted prior to the entry of discharge. Rule 4004(c)(1)(K) accommodates this provision by delaying the entry of discharge where a presumption of undue hardship arises. However, in order for that rule to be effective, the reaffirmation agreement itself must be filed before the entry of discharge. Under Rule 4004(c)(1) discharge is to be entered promptly after the expiration of the time for filing a complaint objecting to discharge, which, under Rule 4004(a), is 60 days after the first date set for the meeting of creditors under §341(a). Accordingly, that date is set as the deadline for filing a reaffirmation agreement.

Any party may file the agreement with the court. Thus, whichever party has a greater incentive to enforce the agreement usually will file it. In the event that the parties are unable to file a reaffirmation agreement in a timely fashion, the rule grants the court broad discretion to permit a late filing. A corresponding change to Rule 4004(c)(1)(J) accommodates such an extension by providing for a delay in the entry of discharge during the pendency of a motion to extend the time for filing a reaffirmation agreement.

Rule 4008 is also amended by deleting provisions regarding the timing of any reaffirmation and discharge hearing. As noted above, §524(m) itself requires that hearings on undue hardship be conducted prior to the entry of discharge. In other respects, including hearings to approve reaffirmation agreements of unrepresented debtors under §524(c)(6), the rule leaves discretion to the court to set the hearing at a time appropriate for the particular circumstances presented in the case and consistent with the scheduling needs of the parties.

*Changes Made After Publication.* The only change was stylistic. The phrase “of the Code” was added to subdivision (b).

COMMITTEE NOTES ON RULES—2009 AMENDMENT

Subdivision (a) of the rule is amended to require that the entity filing the reaffirmation agreement with the court also include Official Form 27, the Reaffirmation Agreement Cover Sheet. The form includes information necessary for the court to determine whether the proposed reaffirmation agreement is presumed to be an undue hardship for the debtor under §524(m) of the Code.

*Changes Made After Publication.* No changes since publication.

PART V—COURTS AND CLERKS

**Rule 5001. Courts and Clerks’ Offices**

(a) **COURTS ALWAYS OPEN.** The courts shall be deemed always open for the purpose of filing any pleading or other proper paper, issuing and returning process, and filing, making, or entering motions, orders and rules.

(b) **TRIALS AND HEARINGS; ORDERS IN CHAMBERS.** All trials and hearings shall be conducted in open court and so far as convenient in a regular court room. Except as otherwise provided in 28 U.S.C. §152(c), all other acts or proceedings may be done or conducted by a judge in chambers and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.

(c) **CLERK’S OFFICE.** The clerk’s office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and the legal holidays listed in Rule 9006(a).

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

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is adapted from subdivisions (a), (b) and (c) of Rule 77 F.R.Civ.P.

NOTES OF ADVISORY COMMITTEE ON RULES—1987  
AMENDMENT

Rule 9001, as amended, defines court to mean the bankruptcy judge or district judge before whom a case or proceeding is pending. Clerk means the bankruptcy clerk, if one has been appointed for the district; if a bankruptcy clerk has not been appointed, clerk means clerk of the district court.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

*Subdivision (c)* is amended to refer to Rule 9006(a) for a list of legal holidays. Reference to F.R.Civ.P. is not necessary for this purpose.

COMMITTEE NOTES ON RULES—2008 AMENDMENT

The rule is amended to permit bankruptcy judges to hold hearings outside of the district in which the case is pending to the extent that the circumstances lead to the authorization of the court to take such action under the 2005 amendment to 28 U.S.C. §152(c). Under that provision, bankruptcy judges may hold court outside of their districts in emergency situations and when the business of the court otherwise so requires. This amendment to the rule is intended to implement the legislation.