

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

Entry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed. Factors that the court should consider in determining whether the estate has been fully administered include (1) whether the order confirming the plan has become final, (2) whether deposits required by the plan have been distributed, (3) whether the property proposed by the plan to be transferred has been transferred, (4) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan, (5) whether payments under the plan have commenced, and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

The court should not keep the case open only because of the possibility that the court's jurisdiction may be invoked in the future. A final decree closing the case after the estate is fully administered does not deprive the court of jurisdiction to enforce or interpret its own orders and does not prevent the court from reopening the case for cause pursuant to §350(b) of the Code. For example, on motion of a party in interest, the court may reopen the case to revoke an order of confirmation procured by fraud under §1144 of the Code. If the plan or confirmation order provides that the case shall remain open until a certain date or event because of the likelihood that the court's jurisdiction may be required for specific purposes prior thereto, the case should remain open until that date or event.

PART IV—THE DEBTOR: DUTIES AND  
BENEFITS

**Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements**

**(a) Relief From Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property**

(1) *Motion.* A motion for relief from an automatic stay provided by the Code or a motion to prohibit or condition the use, sale, or lease of property pursuant to §363(e) shall be made in accordance with Rule 9014 and shall be served on any committee elected pursuant to §705 or appointed pursuant to §1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to §1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct.

(2) *Ex Parte Relief.* Relief from a stay under §362(a) or a request to prohibit or condition the use, sale, or lease of property pursuant to §363(e) may be granted without prior notice only if (A) it clearly appears from specific facts shown by affidavit or by a verified motion that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party or the attorney for the adverse party can be heard in opposition, and (B) the movant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons why notice should not be required. The party obtaining relief under this subdivision and §362(f) or §363(e) shall immediately give oral notice thereof to the trustee or debtor in possession and to the debtor and forthwith mail or otherwise transmit to such adverse party or par-

ties a copy of the order granting relief. On two days notice to the party who obtained relief from the stay without notice or on shorter notice to that party as the court may prescribe, the adverse party may appear and move reinstatement of the stay or reconsideration of the order prohibiting or conditioning the use, sale, or lease of property. In that event, the court shall proceed expeditiously to hear and determine the motion.

(3) *Stay of Order.* An order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise.

**(b) Use of Cash Collateral**

(1) *Motion; Service.* A motion for authorization to use cash collateral shall be made in accordance with Rule 9014 and shall be served on any entity which has an interest in the cash collateral, on any committee elected pursuant to §705 or appointed pursuant to §1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to §1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct.

(2) *Hearing.* The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 15 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 15 day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

(3) *Notice.* Notice of hearing pursuant to this subdivision shall be given to the parties on whom service of the motion is required by paragraph (1) of this subdivision and to such other entities as the court may direct.

**(c) Obtaining Credit**

(1) *Motion; Service.* A motion for authority to obtain credit shall be made in accordance with Rule 9014 and shall be served on any committee elected pursuant to §705 or appointed pursuant to §1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to §1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct. The motion shall be accompanied by a copy of the agreement.

(2) *Hearing.* The court may commence a final hearing on a motion for authority to obtain credit no earlier than 15 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 15 day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

(3) *Notice.* Notice of hearing pursuant to this subdivision shall be given to the parties on whom service of the motion is required by para-

graph (1) of this subdivision and to such other entities as the court may direct.

**(d) Agreement Relating to Relief From the Automatic Stay, Prohibiting or Conditioning the Use, Sale, or Lease of Property, Providing Adequate Protection, Use of Case Collateral, and Obtaining Credit**

(1) *Motion; Service.* A motion for approval of an agreement (A) to provide adequate protection, (B) to prohibit or condition the use, sale, or lease of property, (C) to modify or terminate the stay provided for in §362, (D) to use cash collateral, or (E) between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property shall be served on any committee elected pursuant to §705 or appointed pursuant to §1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to §1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct. The motion shall be accompanied by a copy of the agreement.

(2) *Objection.* Notice of the motion and the time within which objections may be filed and served on the debtor in possession or trustee shall be mailed to the parties on whom service is required by paragraph (1) of this subdivision and to such other entities as the court may direct. Unless the court fixes a different time, objections may be filed within 15 days of the mailing of notice.

(3) *Disposition; Hearing.* If no objection is filed, the court may enter an order approving or disapproving the agreement without conducting a hearing. If an objection is filed or if the court determines a hearing is appropriate, the court shall hold a hearing on no less than five days' notice to the objector, the movant, the parties on whom service is required by paragraph (1) of this subdivision and such other entities as the court may direct.

(4) *Agreement in Settlement of Motion.* The court may direct that the procedures prescribed in paragraphs (1), (2), and (3) of this subdivision shall not apply and the agreement may be approved without further notice if the court determines that a motion made pursuant to subdivisions (a), (b), or (c) of this rule was sufficient to afford reasonable notice of the material provisions of the agreement and opportunity for a hearing.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule implements §362 of the Code which set forth provisions regarding the automatic stay that arises on the filing of a petition. That section and this rule are applicable in chapters 7, 9, 11 and 13 cases. It also implements §363(c)(2) concerning use of cash collateral.

*Subdivision (a)* transforms with respect to the automatic stay what was an adversary proceeding under the former rules to motion practice. The Code provides automatic stays in several sections, *e.g.*, §§362(a), 1301(a), and in §362(d) provides some grounds for relief

from the stay. This rule specifies that the pleading seeking relief is by means of a motion. Thus the time period in Rule 7012 to answer a complaint would not be applicable and shorter periods may be fixed. Section 362(e) requires the preliminary hearing to be concluded within 30 days of its inception, rendering ordinary complaint and answer practice inappropriate.

This subdivision also makes clear that a motion under Rule 9014 is the proper procedure for a debtor to seek court permission to use cash collateral. See §363(c)(2). Pursuant to Rule 5005, the motion should be filed in the court in which the case is pending. The court or local rule may specify the persons to be served with the motion for relief from the stay; see Rule 9013.

*Subdivision (b)* of the rule fills a procedural void left by §362. Pursuant to §362(e), the automatic stay is terminated 30 days after a motion for relief is made unless the court continues the stay as a result of a final hearing or, pending final hearing, after a preliminary hearing. If a preliminary hearing is held, §362(e) requires the final hearing to be commenced within 30 days after the preliminary hearing. Although the expressed legislative intent is to require expeditious resolution of a secured party's motion for relief, §362 is silent as to the time within which the final hearing must be concluded. Subdivision (b) imposes a 30 day deadline on the court to resolve the dispute.

At the final hearing, the stay is to be terminated, modified, annulled, or conditioned for cause, which includes, *inter alia*, lack of adequate protection; §362(d). The burden of proving adequate protection is on the party opposing relief from the stay; §362(g)(2). Adequate protection is exemplified in §361.

*Subdivision (c)* implements §362(f) which permits *ex parte* relief from the stay when there will be irreparable damage. This subdivision sets forth the procedure to be followed when relief is sought under §362(f). It is derived from former Bankruptcy Rule 601(d).

NOTES OF ADVISORY COMMITTEE ON RULES—1987  
AMENDMENT

The scope of this rule is expanded and the former subdivisions (a), (b) and (c) are now combined in subdivision (a). The new subdivision (a)(2) is amended to conform to the 1984 amendments to §362(e) of the Code.

*Subdivision (b)* deals explicitly with the procedures which follow after a motion to use cash collateral is made and served. Filing shall be pursuant to Rule 5005. Service of the motion may be made by any method authorized by Rule 7004 and, if service is by mail, service is complete on mailing. Rule 9006(e). Under subdivision (b)(2), the court may commence a final hearing on the motion within 15 days of service. Rule 9006(f) does not extend this 15 day period when service of the motion is by mail because the party served is not required to act within the 15 day period. In addition to service of the motion, notice of the hearing must be given. Rule 9007 authorizes the court to direct the form and manner of giving notice that is appropriate to the circumstances.

Section 363(c)(3) authorizes the court to conduct a preliminary hearing and to authorize the use of cash collateral "if there is a reasonable likelihood that the trustee will prevail at a final hearing." Subdivision (b)(2) of the rule permits a preliminary hearing to be held earlier than 15 days after service. Any order authorizing the use of cash collateral shall be limited to the amount necessary to protect the estate until a final hearing is held.

The objective of subdivision (b) is to accommodate both the immediate need of the debtor and the interest of the secured creditor in the cash collateral. The time for holding the final hearing may be enlarged beyond the 15 days prescribed when required by the circumstances.

The motion for authority to use cash collateral shall include (1) the amount of cash collateral sought to be used; (2) the name and address of each entity having an interest in the cash collateral; (3) the name and address of the entity in control or having possession of the cash collateral; (4) the facts demonstrating the need to use

the cash collateral; and (5) the nature of the protection to be provided those having an interest in the cash collateral. If a preliminary hearing is requested, the motion shall also include the amount of cash collateral sought to be used pending final hearing and the protection to be provided.

Notice of the preliminary and final hearings may be combined. This rule does not limit the authority of the court under §363(c)(2)(B) and §102(1).

*Subdivision (c)* is new. The service, hearing, and notice requirements are similar to those imposed by subdivision (b). The motion to obtain credit shall include the amount and type of the credit to be extended, the name and address of the lender, the terms of the agreement, the need to obtain the credit, and the efforts made to obtain credit from other sources. If the motion is to obtain credit pursuant to §364(c) or (d), the motion shall describe the collateral, if any, and the protection for any existing interest in the collateral which may be affected by the proposed agreement.

*Subdivision (d)* is new. In the event the 15 day period for filing objections to the approval of an agreement of the parties described in this subdivision is too long, the parties either may move for a reduction of the period under Rule 9006(c)(1) or proceed under subdivision (b) or (c), if applicable. Rule 9006(c)(1) requires that cause be shown for the reduction of the period in which to object. In applying this criterion the court may consider the option of proceeding under subdivision (b) or (c) and grant a preliminary hearing and relief pending final hearing.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

*Subdivision (a)* is expanded to include a request to prohibit or condition the use, sale, or lease of property as is necessary to provide adequate protection of a property interest pursuant to §363(e) of the Code.

Notice of the motion for relief from the automatic stay or to prohibit or condition the use, sale, or lease of property must be served on the entities entitled to receive notice of a motion to approve an agreement pursuant to subdivision (d). If the movant and the adverse party agree to settle the motion and the terms of the agreement do not materially differ from the terms set forth in the movant's motion papers, the court may approve the agreement without further notice pursuant to subdivision (d)(4).

*Subdivision (a)(2)* is deleted as unnecessary because of §362(e) of the Code.

*Subdivisions (b)(1), (c)(1), and (d)(1)* are amended to require service on committees that are elected in chapter 7 cases. Service on committees of retired employees appointed under §1114 of the Code is not required. These subdivisions are amended further to clarify that, in the absence of a creditors' committee, service on the creditors included on the list filed pursuant to Rule 1007(d) is required only in chapter 9 and chapter 11 cases. The other amendments to subdivision (d)(1) are for consistency of style and are not substantive.

*Subdivision (d)(4)* is added to avoid the necessity of further notice and delay for the approval of an agreement in settlement of a motion for relief from an automatic stay, to prohibit or condition the use, sale, or lease of property, for use of cash collateral, or for authority to obtain credit if the entities entitled to notice have already received sufficient notice of the scope of the proposed agreement in the motion papers and have had an opportunity to be heard. For example, if a trustee makes a motion to use cash collateral and proposes in the original motion papers to provide adequate protection of the interest of the secured party by granting a lien on certain equipment, and the secured creditor subsequently agrees to terms that are within the scope of those proposed in the motion, the court may enter an order approving the agreement without further notice if the entities that received the original motion papers have had a reasonable opportunity to object to the granting of the motion to use cash collateral.

If the motion papers served under subdivision (a), (b), or (c) do not afford notice sufficient to inform the recipients of the material provisions of the proposed agreement and opportunity for a hearing, approval of the settlement agreement may not be obtained unless the procedural requirements of subdivision (d)(1), (d)(2), and (d)(3) are satisfied. If the 15 day period for filing objections to the approval of the settlement agreement is too long under the particular circumstances of the case, the court may shorten the time for cause under Rule 9006(c)(1).

COMMITTEE NOTES ON RULES—1999 AMENDMENT

*Paragraph (a)(3)* is added to provide sufficient time for a party to request a stay pending appeal of an order granting relief from an automatic stay before the order is enforced or implemented. The stay under paragraph (a)(3) is not applicable to orders granted ex parte in accordance with Rule 4001(a)(2).

The stay of the order does not affect the time for filing a notice of appeal in accordance with Rule 8002. While the enforcement and implementation of an order granting relief from the automatic stay is temporarily stayed under paragraph (a)(3), the automatic stay continues to protect the debtor, and the moving party may not foreclose on collateral or take any other steps that would violate the automatic stay.

The court may, in its discretion, order that Rule 4001(a)(3) is not applicable so that the prevailing party may immediately enforce and implement the order granting relief from the automatic stay. Alternatively, the court may order that the stay under Rule 4001(a)(3) is for a fixed period less than 10 days.

*GAP Report on Rule 4001.* No changes since publication.

**Rule 4002. Duties of Debtor**

In addition to performing other duties prescribed by the Code and rules, the debtor shall (1) attend and submit to an examination at the times ordered by the court; (2) attend the hearing on a complaint objecting to discharge and testify, if called as a witness; (3) inform the trustee immediately in writing as to the location of real property in which the debtor has an interest and the name and address of every person holding money or property subject to the debtor's withdrawal or order if a schedule of property has not yet been filed pursuant to Rule 1007; (4) cooperate with the trustee in the preparation of an inventory, the examination of proofs of claim, and the administration of the estate, and (5) file a statement of any change of the debtor's address.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule should be read together with §§343 and 521 of the Code and Rule 1007, all of which impose duties on the debtor. Clause (3) of this rule implements the provisions of Rule 2015(a).

NOTES OF ADVISORY COMMITTEE ON RULES—1987  
AMENDMENT

New clause (5) of the rule imposes on the debtor the duty to advise the clerk of any change of the debtor's address.

**Rule 4003. Exemptions**

**(a) Claim of Exemptions**

A debtor shall list the property claimed as exempt under §522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the

schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.

**(b) Objecting to a Claim of Exemptions**

A party in interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under §341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension. Copies of the objections shall be delivered or mailed to the trustee, the person filing the list, and the attorney for that person.

**(c) Burden of Proof**

In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.

**(d) Avoidance by Debtor of Transfers of Exempt Property**

A proceeding by the debtor to avoid a lien or other transfer of property exempt under §522(f) of the Code shall be by motion in accordance with Rule 9014.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 17, 2000, eff. Dec. 1, 2000.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is derived from §522(1) of the Code and, in part, former Bankruptcy Rule 403. The Code changes the thrust of that rule by making it the burden of the debtor to list his exemptions and the burden of parties in interest to raise objections in the absence of which “the property claimed as exempt on such list is exempt;” §522(1).

*Subdivision (a).* While §522(1) refers to a list of property claimed as exempt, the rule incorporates such a list as part of Official Form No. 6, the schedule of the debtor’s assets, rather than requiring a separate list and filing. Rule 1007, to which subdivision (a) refers, requires that schedule to be filed within 15 days after the order for relief, unless the court extends the time.

Section 522(1) also provides that a dependent of the debtor may file the list if the debtor fails to do so. Subdivision (a) of the rule allows such filing from the expiration of the debtor’s time until 30 days thereafter. Dependent is defined in §522(a)(1).

*Subdivision (d)* provides that a proceeding by the debtor, permitted by §522(f) of the Code, is a contested matter rather than the more formal adversary proceeding. Proceedings within the scope of this subdivision are distinguished from proceedings brought by the trustee to avoid transfers. The latter are classified as adversary proceedings by Rule 7001.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

*Subdivision (b)* is amended to facilitate the filing of objections to exemptions claimed on a supplemental schedule filed under Rule 1007(h).

COMMITTEE NOTES ON RULES—2000 AMENDMENT

This rule is amended to permit the court to grant a timely request for an extension of time to file objections to the list of claimed exemptions, whether the court rules on the request before or after the expiration of the 30-day period. The purpose of this amendment is

to avoid the harshness of the present rule which has been construed to deprive a bankruptcy court of jurisdiction to grant a timely request for an extension if it has failed to rule on the request within the 30-day period. See *In re Laurain*, 113 F.3d 595 (6th Cir. 1997), *Matter of Stoulig*, 45 F.3d 957 (5th Cir. 1995), *In re Brayshaw*, 912 F.2d 1255 (10th Cir. 1990). The amendments clarify that the extension may be granted only for cause. The amendments also conform the rule to §522(l) of the Code by recognizing that any party in interest may file an objection or request for an extension of time under this rule. Other amendments are stylistic.

*GAP Report on Rule 4003(b).* The words “trustee or creditor” were replaced by “party in interest” to conform to §522(l) of the Bankruptcy Code which permits any party in interest to object to claimed exemptions. Style revisions also were made to the published draft.

**Rule 4004. Grant or Denial of Discharge**

**(a) Time for Filing Complaint Objecting to Discharge; Notice of Time Fixed**

In a chapter 7 liquidation case a complaint objecting to the debtor’s discharge under §727(a) of the Code shall be filed no later than 60 days after the first date set for the meeting of creditors under §341(a). In a chapter 11 reorganization case, the complaint shall be filed no later than the first date set for the hearing on confirmation. At least 25 days’ notice of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k), and to the trustee and the trustee’s attorney.

**(b) Extension of Time**

On motion of any party in interest, after hearing on notice, the court may for cause extend the time to file a complaint objecting to discharge. The motion shall be filed before the time has expired.

**(c) Grant of Discharge**

(1) In a chapter 7 case, on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge unless:

(A) the debtor is not an individual,

(B) a complaint objecting to the discharge has been filed,

(C) the debtor has filed a waiver under §727(a)(10),

(D) a motion to dismiss the case under §707 is pending,

(E) a motion to extend the time for filing a complaint objecting to the discharge is pending,

(F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e) is pending, or

(G) the debtor has not paid in full the filing fee prescribed by 28 U.S.C. §1930(a) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. §1930(b) that is payable to the clerk upon the commencement of a case under the Code.

(2) Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain.

**(d) Applicability of Rules in Part VII**

A proceeding commenced by a complaint objecting to discharge is governed by Part VII of these rules.

**(e) Order of Discharge**

An order of discharge shall conform to the appropriate Official Form.

**(f) Registration in Other Districts**

An order of discharge that has become final may be registered in any other district by filing a certified copy of the order in the office of the clerk of that district. When so registered the order of discharge shall have the same effect as an order of the court of the district where registered.

**(g) Notice of Discharge**

The clerk shall promptly mail a copy of the final order of discharge to those specified in subdivision (a) of this rule.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 26, 1999, eff. Dec. 1, 1999; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 29, 2002, eff. Dec. 1, 2002.)

## NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is adapted from former Bankruptcy Rule 404.

*Subdivisions (a) and (b)* of this rule prescribe the procedure for determining whether a discharge will be granted pursuant to §727 of the Code. The time fixed by subdivision (a) may be enlarged as provided in subdivision (b).

The notice referred to in subdivision (a) is required to be given by mail and addressed to creditors as provided in Rule 2002.

An extension granted on a motion pursuant to subdivision (b) of the rule would ordinarily benefit only the movant, but its scope and effect would depend on the terms of the extension.

*Subdivision (c)*. If a complaint objecting to discharge is filed, the court's grant or denial of the discharge will be entered at the conclusion of the proceeding as a judgment in accordance with Rule 9021. The inclusion of the clause in subdivision (c) qualifying the duty of the court to grant a discharge when a waiver has been filed is in accord with the construction of the Code. 4 Collier, *Bankruptcy* ¶727.12 (15th ed. 1979).

The last sentence of subdivision (c) takes cognizance of §524(c) of the Code which authorizes a debtor to enter into enforceable reaffirmation agreements only prior to entry of the order of discharge. Immediate entry of that order after expiration of the time fixed for filing complaints objecting to discharge may render it more difficult for a debtor to settle pending litigation to determine the dischargeability of a debt and execute a reaffirmation agreement as part of a settlement.

*Subdivision (d)*. An objection to discharge is required to be made by a complaint, which initiates an adversary proceeding as provided in Rule 7003. Pursuant to Rule 5005, the complaint should be filed in the court in which the case is pending.

*Subdivision (e)*. Official Form No. 27 to which subdivision (e) refers, includes notice of the effects of a discharge specified in §524(a) of the Code.

*Subdivision (f)*. Registration may facilitate the enforcement of the order of discharge in a district other than that in which it was entered. See 2 Moore's *Federal Practice* ¶1.04[2] (2d ed. 1967). Because of the nationwide service of process authorized by Rule 7004, however, registration of the order of discharge is not necessary under these rules to enable a discharged debtor to obtain relief against a creditor proceeding anywhere in the United States in disregard of the injunctive provisions of the order of discharge.

*Subdivision (g)*. Notice of discharge should be mailed promptly after the order becomes final so that creditors may be informed of entry of the order and of its injunctive provisions. Rule 2002 specifies the manner of

the notice and persons to whom the notice is to be given.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

This rule is amended to conform to §727(c) which gives the United States trustee the right to object to discharge. This amendment is derived from Rule X-1008(a)(1) and is consistent with Rule 2002. The amendment to subdivision (c) is to prevent a timely motion to dismiss a chapter 7 case for substantial abuse from becoming moot merely because a discharge order has been entered. Reference to the Official Form number in subdivision (e) is deleted in anticipation of future revision and renumbering of the Official Forms.

NOTES OF ADVISORY COMMITTEE ON RULES—1996  
AMENDMENT

*Subsection (c)* is amended to delay entry of the order of discharge if a motion pursuant to Rule 4004(b) to extend the time for filing a complaint objecting to discharge is pending. Also, this subdivision is amended to delay entry of the discharge order if the debtor has not paid in full the filing fee and the administrative fee required to be paid upon the commencement of the case. If the debtor is authorized to pay the fees in installments in accordance with Rule 1006, the discharge order will not be entered until the final installment has been paid.

The other amendments to this rule are stylistic.

*GAP Report on Rule 4004*. No changes have been made since publication, except for stylistic changes.

## COMMITTEE NOTES ON RULES—1999 AMENDMENT

*Subdivision (a)* is amended to clarify that, in a chapter 7 case, the deadline for filing a complaint objecting to discharge under §727(a) 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 objecting to discharge in accordance with Rule 4004(b).

The substitution of the word "filed" for "made" in subdivision (b) 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, this rule requires that a 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.

**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. Ershowsky*, 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 or revoking a discharge or if a waiver of discharge is filed, the clerk, after the order becomes final or the waiver is filed, shall promptly give notice thereof to all creditors in the manner provided in Rule 2002.

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

## 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).

**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, or Chapter 12 Family Farmer's Debt Adjustment Case; Notice of Time Fixed**

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(c) 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(c) 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 to 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.)

## 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).

#### **Rule 4008. Discharge and Reaffirmation Hearing**

Not more than 30 days following the entry of an order granting or denying a discharge, or confirming a plan in a chapter 11 reorganization case concerning an individual debtor and on not less than 10 days notice to the debtor and the trustee, the court may hold a hearing as provided in §524(d) of the Code. A motion by the debtor for approval of a reaffirmation agreement shall be filed before or at the hearing.

(As amended Apr. 30, 1991, eff. Aug. 1, 1991.)

##### 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.

#### 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. 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.)

##### 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.

#### **Rule 5002. Restrictions on Approval of Appointments**

##### **(a) Approval of Appointment of Relatives Prohibited**

The appointment of an individual as a trustee or examiner pursuant to §1104 of the Code shall not be approved by the court if the individual is a relative of the bankruptcy judge approving the appointment or the United States trustee in the region in which the case is pending. The employment of an individual as an attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§327, 1103, or 1114 shall not be approved by the court if the individual is a relative of the bankruptcy judge approving the employment. The employment of an individual as attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§327, 1103, or 1114 may be approved by the court if the individual is a relative of the United States trustee in the region in which the case is pending, unless the court finds that the relationship with the United States trustee renders the employment improper under the circumstances of the case. Whenever under this subdivision an individual may not be approved for appointment or employment, the individual’s firm, partnership, corporation, or any other form of business association or relationship, and all members, associates and professional employees thereof also may not be approved for appointment or employment.

##### **(b) Judicial Determination That Approval of Appointment or Employment Is Improper**

A bankruptcy judge may not approve the appointment of a person as a trustee or examiner pursuant to §1104 of the Code or approve the employment of a person as an attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§327, 1103, or 1114 of the Code if that person is or has been so connected with such judge or the United States trustee as to render the appointment or employment improper.

(As amended Apr. 29, 1985, eff. Aug. 1, 1985; Apr. 30, 1991, eff. Aug. 1, 1991.)

##### NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is adapted from former Bankruptcy Rule 505(a). The scope of the prohibition on appointment or