

RULE 1006. FILING FEE

1 (a) GENERAL REQUIREMENT. Every petition shall be
2 accompanied by the filing fee except as provided in subdivisions (b)
3 and (c) of this rule. For the purpose of this rule, “filing fee” means
4 the filing fee prescribed by 28 U.S.C. § 1930(a)(1)-(a)(5) and any
5 other fee prescribed by the Judicial Conference of the United States
6 under 28 U.S.C. § 1930(b) that is payable to the clerk upon the
7 commencement of a case under the Code.

8 (b) PAYMENT OF FILING FEE IN INSTALLMENTS

9 (1) Application for Permission to Pay Filing Fee in Installments.

10 A voluntary petition by an individual shall be accepted for filing if
11 accompanied by the debtor’s signed application, prepared as
12 prescribed by the appropriate Official Form, stating that the debtor is
13 unable to pay the filing fee except in installments. ~~The application~~
14 ~~shall state the proposed terms of the installment payments and that the~~
15 ~~applicant has neither paid any money nor transferred any property to~~
16 ~~an attorney for services in connection with the case.~~

17 * * * * *

18 (3) Postponement of Attorney’s Fees. If the court grants leave to
19 pay the filing fee in installments, ~~The filing fee~~ all installments must
20 be paid in full before the debtor or chapter 13 trustee may make

21 further payments pay an to an attorney or any other person who
22 renders service to the debtor in connection with the case.
23 (c) WAIVER OF FILING FEE. A voluntary petition filed by an
24 individual shall be accepted for filing if accompanied by the debtor's
25 application requesting a waiver under 28 U.S.C. § 1930(f), prepared
26 as prescribed by the appropriate Official Form.

COMMITTEE NOTE

Subdivision (a) is amended to include a reference to new subdivision (c), which deals with fee waivers under 28 U.S.C. § 1930(f) which was added in 2005.

Subdivision (b)(1) is amended to delete the sentence requiring a disclosure that the debtor has not paid an attorney or other person in connection with the case. Inability to pay the filing fee in installments is one of the requirements for a fee waiver under the 2005 revisions to 28 U.S.C. § 1930(f). If the attorney payment prohibition were retained, payment of an attorney's fee would render many debtors ineligible for installment payment and thus enhance their eligibility for the fee waiver. The deletion of this prohibition from the rule, which was not statutorily required, ensures that debtors who have the financial ability to pay the fee in installments will do so rather than requesting a waiver. Debtors will continue to disclose any payments to attorneys or other parties in connection with the case on applications to pay the fee in installments and on applications for fee waivers.

Subdivision (b)(3) is amended in conformance with the changes to (b)(1) to reflect the 2005 amendments. The change is meant to clarify that (b)(3) refers to payments made after the debtor has filed the bankruptcy case and after the debtor has received permission to pay the fee in installments. Otherwise, the subdivision may conflict with intent and effect of the amendments to subdivision (b)(1).

**RULE 1007. LISTS, SCHEDULES, ~~AND~~ STATEMENTS, AND
OTHER DOCUMENTS; TIME LIMITS**

* * * * *

(b) SCHEDULES, ~~and~~ STATEMENTS, AND OTHER
DOCUMENTS REQUIRED.

(1) Except in a chapter 9 municipality case, the debtor, unless the court orders otherwise, shall file the following schedules, statements, and other documents, prepared as prescribed by the appropriate Official Forms, if any:

(A) schedules of assets and liabilities; ;

(B) a schedule of current income and expenditures; ;

(C) a schedule of executory contracts and unexpired leases;

and; ;

(D) a statement of financial affairs, ~~prepared as prescribed by the appropriate Official Forms; ;~~

(E) copies of all payment advices or other evidence of payment, if any, with all but the last four digits of the debtor's social security number redacted, received by the debtor from an employer within 60 days before the filing of the petition; and

(F) a record of any interest that the debtor has in an account or program of the type specified in § 521(c) of the Code.

20 (2) An individual debtor in a chapter 7 case shall file a statement
21 of intention as required by § 521(a) 521(2) of the Code, prepared as
22 prescribed by the appropriate Official Form. A copy of the statement
23 of intention shall be served on the trustee and the creditors named in
24 the statement on or before the filing of the statement.

25 (3) Unless the United States trustee has determined that the credit
26 counseling requirement of § 109 does not apply in the district, an
27 individual debtor must file the certificate and debt repayment plan, if
28 any, required by § 521(b), a certification under § 109(h)(3), or a
29 request for a determination by the court under § 109(h)(4).

30 (4) Unless § 707(b)(2)(D) applies, an individual debtor in a
31 chapter 7 case with primarily consumer debts shall file a statement of
32 current monthly income prepared as prescribed by the appropriate
33 Official Form, and, if the debtor has current monthly income greater
34 than the applicable median family income for the applicable state and
35 household size, the calculations in accordance with § 707(b),
36 prepared as prescribed by the appropriate Official Form.

37 (5) An individual debtor in a chapter 11 case shall file a statement
38 of current monthly income, prepared as prescribed by the appropriate
39 Official Form.

40 (6) A debtor in a chapter 13 case shall file a statement of current

41 monthly income, prepared as prescribed by the appropriate Official
42 Form, and, if the debtor has currently monthly income greater than
43 the median family income for the applicable state and family size, a
44 calculation of disposable income in accordance with § 1325(b)(3),
45 prepared as prescribed by the appropriate Official Form.

46 (7) [Unless the United States trustee has determined that the
47 requirement does not apply in the district]¹, an individual debtor
48 shall file a statement regarding completion of a course in personal
49 financial management, prepared as prescribed by the appropriate
50 Official Form.

51 (c) TIME LIMITS. The schedules, ~~and statements, and other~~
52 ~~documents required by subdivision (b)(1), (4),(5), and (6); other than~~
53 ~~the statement of intention~~, shall be filed with the petition in a
54 voluntary case, or if the petition is accompanied by a list of all the
55 debtor's creditors and their addresses, within 15 days thereafter,
56 except as otherwise provided in subdivisions (d), (e), and (h) of this
57 rule. In an involuntary case the schedules, ~~and statements, and other~~
58 ~~documents required by subdivision (b)(1), other than the statement of~~
59 ~~intention~~, shall be filed by the debtor within 15 days after entry of the

¹ This language may be deleted and the sentence would begin with “An individual debtor shall file....” The change was suggested as a part of the discussions of the Forms Subcommittee on the filing of the Official Form regarding financial management course completion.

The title of this rule is expanded to refer to “documents” in conformity with the 2005 amendments to § 521 and related provisions of the Bankruptcy Code that include a wider range of documentary requirements.

Subdivision (b)(1) addresses schedules, statements, and other documents that the debtor must file unless the court orders otherwise and other than in a case under Chapter 9. This subdivision is amended to include documentary requirements added by the 2005 amendments to § 521 that apply to the same group of debtors and have the same time limits as the existing requirements of (b)(1). Consistent with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2921 (2002), the payment advices should be redacted before they are filed.

Subdivision (b)(2) is amended to conform the renumbering of the subsections of § 521.

Subdivisions (b)(3) through (b)(7) are new. They implement the 2005 amendments to the Bankruptcy Code. Subdivision (b)(3) provides a procedure for filing documents relating to the nonprofit credit counseling requirement provided by the 2005 amendments to § 109.

Subdivision (b)(4) addresses the filing of information about current monthly income, as defined in § 101, for certain chapter 7 debtors and, if required, additional calculations of expenses required by the 2005 revisions to § 707(b).

Subdivision (b)(5) addresses the filing of information about current monthly income, as defined in § 101, for individual chapter 11 debtors. The 2005 amendments to § 1129(a)(15) condition plan confirmation for individual debtors on the commitment of disposable income as defined in § 1325(b)(2), which is based on current monthly income.

Subdivision (b)(6) addresses the filing of information about current monthly income, as defined in § 101, for chapter 13 debtors and, if required, additional calculations of expenses. These changes are necessary because the 2005 amendments to § 1325 require that determinations of disposable income start with current monthly income.

Subdivision (b)(7) reflects the 2005 amendments to §§ 727 and 1328 that condition the receipt of a discharge on the completion of a personal financial management course, with certain exceptions.

Subdivision (c) is amended to include time limits for the filing requirements added to subdivision (b) due to the 2005 amendments to the Bankruptcy Code, and to make conforming amendments. Separate time limits are provided for the documentation of credit counseling and for the statement of the completion of the financial management course.

RULE 1009. AMENDMENTS OF VOLUNTARY PETITIONS, LISTS, SCHEDULES AND STATEMENTS

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(b) STATEMENT OF INTENTION. The statement of intention may be amended by the debtor at any time before the expiration of the period provided in § 521(a) ~~521(2)(B)~~ of the Code. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby.

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COMMITTEE NOTE

Subdivision (b) is amended to conform to the 2005 amendments to § 521 of the Bankruptcy Code.

RULE 1017. DISMISSAL OR CONVERSION OF CASE; SUSPENSION

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(e) DISMISSAL OF AN INDIVIDUAL DEBTOR’S CHAPTER 7

3 CASE OR CONVERSION TO A CASE UNDER CHAPTER 11 or 13
4 ~~FOR SUBSTANTIAL ABUSE.~~ The court may dismiss or, with the
5 debtor’s consent, convert an individual debtor's case for ~~substantial~~
6 abuse under § 707(b) only on motion ~~by the United States trustee or on~~
7 ~~the court's own motion~~ and after a hearing on notice to the debtor, the
8 trustee, the United States trustee, and any other entities as the court
9 directs.

10 (1) A motion to dismiss a case for ~~substantial~~ abuse under § 707(b)
11 or (c) may be filed ~~by the United States trustee~~ only within 60 days
12 after the first date set for the meeting of creditors under § 341(a),
13 unless, on request filed ~~by the United States trustee~~ before the time has
14 expired, the court for cause extends the time for filing the motion to
15 dismiss. The ~~United States trustee~~ party filing the motion shall set
16 forth in the motion all matters to be considered ~~submitted to the court~~
17 ~~for its consideration~~ at the hearing. A motion to dismiss under §§
18 707(b)(1) and (3) shall state with particularity the circumstances
19 alleged to constitute abuse.

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COMMITTEE NOTE

Subdivisions (e) and (e)(1) are amended to implement the 2005 revisions to § 707 of the Bankruptcy Code. These revisions 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 motions. 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. Subdivision (e) therefore requires that motions to dismiss under §§ 707(b)(1) and (3) state with particularity the circumstances alleged to constitute abuse to enable the debtor to respond.

RULE 1019. CONVERSION OF CHAPTER 11 REORGANIZATION CASE, CHAPTER 12 FAMILY FARMER’S DEBT ADJUSTMENT CASE, OR CHAPTER 13 INDIVIDUAL’S DEBT ADJUSTMENT CASE TO CHAPTER 7 LIQUIDATION CASE

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1
2 (2) NEW FILING PERIODS. A new time period for filing claims,
3 a complaint objecting to discharge, or a time period for filing a motion
4 under § 707(b) or (c) ~~or a complaint to obtain a determination of~~
5 ~~dischargeability of any debt~~ shall commence under pursuant to Rules
6 1017, 3002 or 4004 ~~3002, 4004, or 4007~~, provided that a new time
7 period shall not commence if a chapter 7 case had been converted to a
8 chapter 11, 12, or 13 case and thereafter reconverted to a chapter 7
9 case and the time for filing claims, a motion under § 707(b) or (c), or
10 ~~claims, a complaint objecting to discharge, or a complaint to obtain a~~
11 ~~determination of the dischargeability of any debt, or any extension~~
12 thereof, expired in the original chapter 7 case. In a case converted to

13 chapter 7 from chapter 13, a new period shall commence under Rule
14 4007 for filing a complaint to obtain a determination that a debt is not
15 dischargeable under § 523(a)(6), unless the case was converted
16 previously to chapter 13 from chapter 7 and the time for filing such a
17 complaint expired in the first chapter 7 case.

COMMITTEE NOTE

Subdivision (2) is amended to reflect possibilities that arise as a consequence of the 2005 amendments to § 707(b) of the Bankruptcy Code. The revisions permit a party in interest to seek conversion of a chapter 7 case to another chapter on the grounds set forth in § 707(b). This makes it more likely than under prior law that a case will be converted from chapter 7 to chapter 13, and then back to chapter 7.

Subdivision (2) also is amended to reflect the 2005 revisions to the Bankruptcy Code relating to the scope of the discharge. The revisions make all of the exceptions to discharge in § 523(a) applicable in chapter 11. The revisions increase the number of exceptions to discharge applicable to chapter 13 cases, including two of the three to which § 523(c) applies and for which Rule 4007 establishes filing deadlines. Thus, except with respect to § 523(a)(6), the third exception to which § 523(c) applies, the conversion of a case to another chapter will not create a need for a new deadline for exceptions to discharge. Subdivision (2) imposes a new deadline for pursuing an exception to discharge under § 523(a)(6) if a case is converted from chapter 13 to chapter 7.

**RULE 2002. NOTICES TO CREDITORS, EQUITY SECURITY
HOLDERS, UNITED STATES, AND UNITED STATES
TRUSTEE**

1 * * * * *

2 (f) OTHER NOTICES. Except as provided in subdivision (1) of this
3 rule, the clerk, or some other person as the court may direct, shall give

4 the debtor, all creditors, and indenture trustees notice by mail of: (1)
5 the order for relief; (2) the dismissal or the conversion of the case to
6 another chapter, or the suspension of proceedings under § 305; (3) the
7 time allowed for filing claims pursuant to Rule 3002; (4) the time
8 fixed for filing a complaint objecting to the debtor's discharge
9 pursuant to § 727 of the Code as provided in Rule 4004; (5) the time
10 fixed for filing a complaint to determine the dischargeability of a debt
11 pursuant to § 523 of the Code as provided in Rule 4007; (6) the
12 waiver, denial, or revocation of a discharge as provided in Rule 4006;
13 (7) entry of an order confirming a chapter 9, 11 or 12 plan; ~~and~~ (8) a
14 summary of the trustee's final report in a chapter 7 case if the net
15 proceeds realized exceed \$1,500; (9) a notice under Rule 5008
16 regarding the presumption of abuse; and (10) a statement under §
17 704(b)(1) as to whether the debtor's case would be presumed to be an
18 abuse under § 707(b). Notice of the time fixed for accepting or
19 rejecting a plan pursuant to Rule 3017(c) shall be given in accordance
20 with Rule 3017(d).

COMMITTEE NOTE

Subdivisions (f)(9) and (10) are new. They reflect the 2005 amendments to §§ 342(d) and 704(b) of the Bankruptcy Code. Section 342(d) requires the clerk to give notice to creditors shortly after the commencement of the case as to whether a presumption of abuse exists. Subdivision (f)(9) adds this notice to the list of notices that the clerk must give. Subdivision (f)(10) implements the amendment to §

704(b) which requires the court to provide a copy to all creditors of a statement by the United States trustee or bankruptcy administrator as to whether the debtor's case would be presumed to be an abuse under § 707(b) not later than five days after receiving it.

RULE 3002. FILING PROOF OF CLAIM OR INTEREST

[NOTE: Both the business and consumer subcommittees drafted amendments to Rule 3002, and they differ with respect to a governmental unit's time to file a proof of claim for which a return is filed under § 1308. Both versions are presented below.]

(ALTERNATIVE #1: BUSINESS SUBCOMMITTEE)

1 (c) TIME FOR FILING. In a chapter 7 ~~liquidation~~, chapter 12
2 ~~family farmer's debt adjustment~~, or chapter 13 ~~individual's debt~~
3 ~~adjustment~~ case, a proof of claim is timely filed if it is filed not later
4 than 90 days after the first date set for the meeting of creditors called
5 under § 341(a) of the Code, except as follows:

6 (1) A proof of claim filed by a governmental unit is timely
7 filed if it is filed not later than 180 days after the date of the order
8 for relief or, if the claim is for a tax based on a return filed under §
9 1308, not later than 60 days after the date on which the return was
10 filed as required by that section. On motion of a governmental unit
11 before the expiration of such period and for cause shown, the court
12 may extend the time for filing of a claim by the governmental unit.

13 *****

14 (6) If notice of the time for filing a proof of claim has been mailed

15 to a creditor at a foreign address, on motion filed by the creditor
16 before or after the expiration of the time, the court may extend the
17 time by not more than 60 days if the court finds that the notice was
18 not sufficient under the circumstances to give the creditor a
19 reasonable time to file a proof of claim.

COMMITTEE NOTE

This rule is amended to conform to changes in the Code made in 2005. Under § 502(b)(9), governmental units asserting claims based on tax returns filed under § 1308 during a chapter 13 case have a different time period for filing proofs of those claims. Paragraph (c)(1) is amended to conform to §502(b)(9).

Paragraph (c)(6) is added to give the court discretion to extend the time for filing a proof of claim for a creditor who received notice of the time to file the claim at a foreign address, if the court finds that the notice was not sufficient, under the particular circumstances, to give the foreign creditor a reasonable time to file a proof of claim. This amendment is designed to comply with Section 1514(d), which was added to the Code in 2005 and requires that the rules or any other order of the court provide such additional time as is reasonable under the circumstances for foreign creditors to file claims in cases under all chapters of the Code.

RULE 3002. FILING PROOF OF CLAIM OR INTEREST

(ALTERNATIVE #2: CONSUMER SUBCOMMITTEE)

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(c) TIME FOR FILING. In a chapter 7 liquidation, chapter 12 family farmer’s debt adjustment, or chapter 13 individual’s debt adjustment case, a proof of claim is timely filed if it is filed not later

5 than 90 days after the first date set for the meeting of creditors called
6 under § 341(a) of the Code, except as follows:

7 (1) A proof of claim filed by a governmental unit, other than for a
8 claim resulting from a tax return filed under § 1308, is timely filed if it
9 is filed not later than 180 days after the date of the order for relief. On
10 motion of a governmental unit before the expiration of such period and
11 for cause shown, the court may extend the time for filing of a claim by
12 the governmental unit. A proof of claim filed by a governmental unit
13 for a claim resulting from a tax return filed under § 1308 is timely
14 filed if it is filed not later than 180 days after the date of the order for
15 relief or 60 days after the date of the filing of the tax return, whichever
16 is later.

COMMITTEE NOTE

Subdivision (c)(1) is amended to reflect the addition of § 1308 to the Bankruptcy Code in 2005. This provision requires that chapter 13 debtors file tax returns during the pendency of the case, and imposes bankruptcy-related consequences if debtors fail to do so. Subdivision (c)(1) provides additional time for governmental units to file a proof of claim for tax obligations with respect to tax returns filed during the pendency of a chapter 13 case.

4002. Duties of Debtor.

1 (a) IN GENERAL. In addition to performing other duties
2 prescribed by the Code and rules, the debtor shall:

3 (1) attend and submit to an examination at the times ordered by

4 the court;

5 (2) attend the hearing on a complaint objecting to discharge and
6 testify, if called as a witness;

7 (3) inform the trustee immediately in writing as to the location of
8 real property in which the debtor has an interest and the name and
9 address of every person holding money or property subject to the
10 debtor's withdrawal or order if a schedule of property has not yet been
11 filed pursuant to Rule 1007;

12 (4) cooperate with the trustee in the preparation of an inventory,
13 the examination of proofs of claim, and the administration of the
14 estate; and

15 (5) file a statement of any change of the debtor's address.

16 (b) INDIVIDUAL DEBTOR'S DUTY TO PROVIDE
17 DOCUMENTATION.

18 (1) Personal Identification. Every individual debtor shall bring to
19 the meeting of creditors under § 341:

20 (A) a picture identification issued by a governmental unit, or
21 other personal identifying information that establishes the debtor's
22 identity; and

23 (B) evidence of social security number(s), or a written
24 statement that such documentation does not exist.

25 (2) Financial Information. Every individual debtor shall bring to
26 the meeting of creditors under § 341 and make available to the trustee
27 the following documents or copies of them, or provide a written
28 statement that the documentation does not exist [or is not in the
29 debtor's possession]:

30 (A) evidence of current income such as the most recent pay
31 stub;

32 (B) unless the trustee or the United States trustee instructs
33 otherwise, statements for each of the debtor's depository and
34 investment accounts, including checking, savings, and money
35 market accounts, mutual funds and brokerage accounts for the
36 time period that includes the date of the filing of the petition;
37 and

38 (C) documentation of monthly expenses claimed by the debtor
39 when required by § 707(b)(2)(A) or (B).

40 (3) Tax Return. At least 7 days before the first date set for the
41 meeting of creditors under § 341, the debtor shall provide to the
42 trustee a copy of the debtor's Federal income tax return for the most
43 recent tax year ending immediately before the commencement of the
44 case and for which a return was filed, including any attachments, or a
45 transcript of the tax return, or provide a written statement that the

information provided by the debtor in the case. The rule does not require that the debtor create documents or obtain documents from third parties; rather, the debtor's obligation is to bring to the meeting of creditors under § 341, or previously provide copies of Federal income tax returns, the documents which the debtor possesses. Any written statement that the debtor provides indicating either that documents do not exist or are not in the debtor's possession must be verified or contain an unsworn declaration as required under Rule 1008.

Because the amendment implements the debtor's duty to cooperate with the trustee, the materials provided to the trustee would not be made available to any other party in interest at the § 341 meeting of creditors. Some of the documents may contain otherwise private information that should not be disseminated. While the Administrative Office of the United States Courts will be issuing guidelines for safeguarding the confidentiality of tax information, the rule requires the production of other documents that may include identical or comparable information. For example, pay stubs and financial account statements might include the social security numbers of the debtor and the debtor's spouse and dependents, as well as the names of the debtor's children. The debtor should redact all but the last four digits of all social security numbers and the names of any minors when they appear in these documents. This type of information would not usually be needed by creditors and others who may be attending the meeting. If a creditor perceives a need to review specific documents or other evidence, the creditor may proceed under Rule 2004.

Rule 4003. EXEMPTIONS

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- 1 (b) OBJECTING TO A CLAIM OF EXEMPTIONS.
- 2 (1) Except as provided in paragraph (2), a party in interest may file
- 3 an objection to the list of property claimed as exempt within 30 days

4 after the meeting of creditors held under § 341(a) is concluded or
5 within 30 days after any amendment to the list or supplemental
6 schedules is filed, whichever is later. The court may, for cause, extend
7 the time for filing objections if, before the time to object expires, a
8 party in interest files a request for an extension.

9 (2) An objection to a claim of exemption based on § 522(q) shall be
10 filed before the closing of the case after the exemption is first claimed.

11 (3) Copies of the objections shall be delivered or mailed to the trustee,
12 the person filing the list, and the attorney for that person.

COMMITTEE NOTE

Subdivision (b) is amended to reflect the 2005 addition of subsection (q) to § 522 of the Bankruptcy Code. Section 522(q) imposes a \$125,000 limit on a state homestead exemption if the debtor has been convicted of a felony or owes a debt arising from certain causes of action. Other revised provisions of the Bankruptcy Code, such as § 727(a)(12) and § 1328(h), suggest that the court may consider issues relating to § 522 late in the case, and the 30-day period for objections would not be appropriate for this provision. A new subdivision (b)(2) is added to provide a separate time limit for this provision. Under that subdivision, if an exemption is first claimed after a case is reopened, the time to object is extended to the closing of the reopened case.

Rule 4004. GRANT OR DENIAL OF DISCHARGE²

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² An alternative to subdivision (c)(1)(I) is set out along with related material and rules amendments at the end of these proposals. The Advisory Committee will need to choose between these methods of implementing the addition of § 522(q) to the Code.

2 (c) GRANT OF DISCHARGE.

3 (1)

4 * * * * *

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

7 (G) the debtor has not paid in full the filing fee prescribed by 28
8 U.S.C. § 1930(a) and any other fee prescribed by the Judicial
9 Conference of the United States under 28 U.S.C. § 1930(b) that is
10 payable to the clerk upon the commencement of a case under the
11 Code, unless the court has waived the fees under 28 U.S.C. § 1930(f);

12 (H) the debtor has not filed with the court a statement regarding
13 completion of a course in personal financial management as required
14 by Rule 1007(b)(7);

15 (I) a motion to delay or postpone discharge under §§ 727(a)(12),
16 1141(d)(5)(C), 1228(f), or 1328(h) is pending; or

17 (J) a presumption that a reaffirmation agreement is an undue
18 hardship has arisen under § 524(m).

COMMITTEE NOTE

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

Subdivision (c)(1)(H) is new. It reflects the 2005 additions to the Bankruptcy 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 additions to the Bankruptcy Code of §§ 727(a)(12), 1141(d)(6), 1228(f), and 1328(h). These provisions are 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 in all chapters, although the statutorily-provided procedures for determining the existence of reasonable cause differ depending on the chapter.

Subdivision (c)(1)(J) is new. It reflects the 2005 revisions to § 524 of the Bankruptcy 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).

Rule 4006. NOTICE OF NO DISCHARGE

1 If an order is entered denying or revoking a discharge or if a
2 waiver of discharge is filed, the clerk, after the order becomes final or
3 the waiver is filed, or, in the case of an individual, if the case is closed
4 without the entry of an order of discharge, shall promptly give notice
5 thereof to all ~~creditors~~ parties in interest in the manner provided in
6 Rule 2002.

COMMITTEE NOTE

Rule 4006 is amended to reflect the 2005 revisions to the Bankruptcy Code requiring that individual debtors complete a course in personal financial management as a condition to the entry of a discharge. If the debtor fails to complete the course, no discharge will be entered, but the case may be closed. The amended rule provides notice to parties in interest, including the debtor, that no discharge was entered.

RULE 4007. DETERMINATION OF DISCHARGEABILITY OF A DEBT

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1
2 (c) TIME FOR FILING COMPLAINT UNDER § 523(c) IN A
3 CHAPTER 7 LIQUIDATION, CHAPTER 11 REORGANIZATION,
4 ~~OR~~ CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT
5 CASE, OR CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT
6 CASE; NOTICE OF TIME FIXED. Except as provided in subdivision
7 (d), a ~~A~~ complaint to determine the dischargeability of a debt under §
8 523(c) shall be filed no later than 60 days after the first date set for the
9 meeting of creditors under § 341(a). The court shall give all creditors
10 no less than 30 days' notice of the time so fixed in the manner
11 provided in Rule 2002. On motion of any party in interest, after
12 hearing on notice, the court may for cause extend the time fixed under
13 this subdivision. The motion shall be filed before the time has
14 expired.

2 denying a discharge, or confirming a plan in a chapter 11
3 reorganization case concerning an individual debtor and on not less
4 than 10 days notice to the debtor and the trustee, the court may hold a
5 hearing as provided in § 524(d) of the Code. A motion by the debtor
6 for approval of a reaffirmation agreement shall be filed before or at the
7 hearing. The debtor's statement required under § 524(k) shall be
8 accompanied by a statement of the total income and total expense
9 amounts stated on schedules I and J. If there is a difference between
10 the income and expense amounts stated on schedules I and J and the
11 statement required under § 524(k), the accompanying statement shall
12 include an explanation of any difference.

COMMITTEE NOTE

Rule 4008 is amended to reflect the 2005 addition of §§ 524(k)(6)(A) and 524(m) to the Bankruptcy Code. These provisions require that a debtor file a signed statement in support of a reaffirmation agreement, and authorize a court to review the agreement if, based on the assertions on the statement, the agreement is presumed to be an undue hardship. The rule revision requires that an accompanying statement show the total income and expense amounts stated on schedules I and J and an explanation of any discrepancies. This will allow the court to evaluate the reaffirmation for undue hardship as § 524(m) requires. A corresponding change has been made to Rule 4004(c) to prevent the entry of a discharge until the court has approved or disapproved the reaffirmation agreement in accordance with § 524(m).

RULE 5008 NOTICE REGARDING PRESUMPTION OF ABUSE IN CHAPTER 7 CASES OF INDIVIDUAL DEBTORS

In a chapter 7 case of an individual with primarily consumer debts in

5 which a presumption of abuse has arisen under § 707(b), the clerk
6 shall give to creditors notice of the presumption of abuse in
7 accordance with Rule 2002 within 10 days after the date of the filing
8 of the petition. If the debtor has not filed a statement indicating
9 whether a presumption of abuse has arisen, the clerk shall give notice
10 to creditors within 10 days after the date of the filing of the petition
11 that the debtor has not filed the statement and that further notice will
12 be given if a later filed statement indicates that a presumption of abuse
13 has arisen. If a debtor later files a statement indicating that a
14 presumption of abuse has arisen, the clerk shall give notice to creditors
15 of the presumption of abuse as promptly as practicable.

COMMITTEE NOTE

This rule is new. The 2005 revisions to § 342 of the Bankruptcy Code require that clerks give written notice to all creditors not later than 10 days after the date of the filing of the petition that a presumption of abuse has arisen under § 707(b). A statement filed by the debtor will be the source of the clerk's information about the presumption of abuse. This rule enables the clerk to meet its obligation to send the notice within the statutory time period set forth in § 342. In the event that the court receives the debtor's statement after the clerk has sent the first notice, and the debtor's statement indicates a presumption of abuse, this rule requires that the clerk send a second notice.