

# Amendments to the Federal Rules of Bankruptcy Procedure

Effective December 1, 2013



Amendments to Rules 1007, 4004, 5009, 9006, 9013 and 9014 of the Federal Rules of Bankruptcy Procedure were approved by the Judicial Conference at its September 2012 session, and subsequently adopted by the Supreme Court pursuant to Section 2075 of Title 28, United States Code. The amendments were transmitted to Congress in accordance with the Rules Enabling Act, and will take effect on December 1, 2013, unless Congress enacts legislation to the contrary.

Amendments to Official Bankruptcy Forms 3A (Application for Individuals to Pay the Filing Fee in Installments), 3B (Application to Have the Chapter 7 Filing Fee Waived), 6I (Schedule I: Your Income), 6J (Schedule J: Your Expenses), 6 Summary (Summary of Schedules), 23 (Debtor’s Certification of Completion of Instructional Course Concerning Financial Management) and 27 (Reaffirmation Agreement Cover Sheet), will also take effect on December 1, 2013, if approved by the Judicial Conference at its meeting in September 2013.

For further information regarding rule changes, please visit the U.S. Court Rulemaking page located at [www.uscourts.gov/RulesAndPolicies/rules.aspx](http://www.uscourts.gov/RulesAndPolicies/rules.aspx).

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# Summary of Amendments to Federal Rules of Bankruptcy Procedure

## Amendments Related to Certification of Course in Personal Financial Management

[Bankruptcy Rule 1007](#) - The proposed amendment to Rule 1007(b)(7) relieves individual debtors of the obligation to file a certification of completion of an instructional course concerning personal financial management (Form B23) as a condition for discharge if the provider of an instructional course directly notifies the court that the debtor has completed the course.

[Bankruptcy Rule 4004](#) - The proposed amendments to Rule 4004(c)(1) are made to conform to the simultaneous amendment to Rule 1007(b)(7) as well as to add clarification language to other provisions of subdivision (c)(1).

Rule 4004(c)(1)(H) is amended to provide that the court must delay entering a discharge for a debtor who has not filed a certificate of completion only if the debtor was in fact required to do so under Rule 1007(b)(7).

The introductory language of 4004(c)(1) is revised to make clear that the listed circumstances for the denial of discharge do not just relieve the court of the obligation to enter the discharge but that they prevent the court from entering a discharge

Subdivision (c)(1)(k) is amended to make clear that the prohibition on entering a discharge due to a presumption of undue hardship under § 524(m) ceases when the presumption expires or the court concludes a hearing on the presumption.

[Bankruptcy Rule 5009](#) - The proposed amendment to Rule 5009(b) reflects the proposed amendment of Rule 1007(b)(7). If Official Form B23 has not been filed within 45 days after the first date set for the meeting of creditors, Rule 5009(b) currently requires the clerk to send a warning notice that the case will be closed without discharge unless the statement is filed within the applicable time limit. The proposed amendment requires the clerk to send the notice only if the course provider has not notified the court of the debtor's completion of the course and the debtor has failed to file the statement within the 45 day period.

## Amendments Related to Time Limits for Service of Motions and Responses

[Bankruptcy Rule 9006](#) - The title of this rule is amended in order to draw attention to the rule's default deadlines for the service of motions and written responses. This change is consistent with Federal Rule of Civil Procedure 6 and should make it easier to find the provision governing motion practice

Rule 9006(d) currently covers only the timing of serving opposing affidavits. The proposed amendment would expand the coverage of subdivision (d) to address the timing of the service of any written response to a motion.

[Bankruptcy Rule 9013](#) - Rule 9013, which addresses the form and service of motions, is amended to provide a cross-reference to the time periods in Rule 9006(d) and to call greater attention to the default deadlines for motion practice. Stylistic changes are also made to provide greater clarity.

[Bankruptcy Rule 9014](#) - Rule 9014, which addresses contested matters in bankruptcy, is amended to provide a cross-reference to the time periods in Rule 9006(d) for serving motions and responses.

## **Amendments to Official Bankruptcy Forms**

### **Forms Modernization Project**

The Application for Individuals to Pay Filing Fee in Installments, Application to Waive Ch. 7 Filing Fee, Schedule I, and Schedule J, are the first of the restyled forms developed as part of the Bankruptcy Rules Committee's Forms Modernization Project ("FMP"). The FMP is a multi-year endeavor with the goal of improving ease of use as well as improving the interface between the forms and the latest technology. The forms listed below were selected for the initial implementation phase of the FMP because they make no significant change in substantive content and simply replace existing forms that apply only in individual-debtor cases. The forms are designed to be more easily understood by users who are unfamiliar with bankruptcy and who are often not represented by an attorney. In addition to restyling, minor substantive changes are described in the committee notes for the four forms.

[Form 3A Application to Pay Filing Fee in Installments](#)

[Form 3B Application to Have Ch. 7 Filing Fee Waived](#)

[Form 6I Schedule I: Your Income](#)

[Form 6J Schedule J: Your Expenses](#)

### **Other Amended Official Forms**

The Summary of Schedules (B6) and Reaffirmation Cover Sheet (B27) are revised with cross references to Schedules I and J.

Official Form 23 is revised in connection with a change to Bankruptcy Rule 1007(b)(7). Official Form 23 is revised to reflect the rule change by including an instruction stating that the debtor should complete and file the form only if the provider has not already notified the court of the debtor's completion of the course.

[Form B6 Summary of Schedules](#)

[Form B23 Certification of Completion of Course Concerning Financial Management](#)

[Form B27 Reaffirmation Agreement Cover Sheet](#)

### **Directors Procedural Forms for Subpoenas**

The three existing Directors Procedural forms for subpoenas will be withdrawn on December 1, 2013 and replaced with four updated versions (Forms 254, 255, 256, and 257) that incorporate pending changes to Federal Rule of Civil Procedure 45, which is made applicable in bankruptcy cases by Bankruptcy Rule 9016. The revised bankruptcy subpoenas more closely follow the topic organization of subpoenas in civil cases.

[Form B254 Subpoena for Rule 2004 Examination](#)

[Form B255 Subpoena to Appear and Testify at a Hearing or Trial in a Bankruptcy Case \(or Adversary Proceeding\)](#)

[Form B256 Subpoena to Testify at a Deposition in a Bankruptcy Case \(or Adversary Proceeding\)](#)

[Form B257 Subpoena to Produce Documents, Information, or Objects or To Permit Inspection in a Bankruptcy Case \(or Adversary Proceeding\)](#)

For further information regarding pending changes in bankruptcy forms, including copies of instructions and committee notes to each amended form, please visit the Bankruptcy Forms Pending Changes section of the Federal Rules page of the Judiciary website at <http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms/BankruptcyFormsPendingChanges.aspx>.

# Proposed Amendments to the Federal Rules of Bankruptcy Procedure (redline)<sup>1</sup>

## Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Limits<sup>\*\*</sup>

\* \* \* \* \*

### (b) Schedules, Statements, and Other Documents Required.

\* \* \* \* \*

(7) Unless an approved provider of an instructional course concerning personal financial management has notified the court that a debtor has completed the course after filing the petition:

(A) An individual debtor in a chapter 7 or chapter 13 case shall file a statement of completion of ~~the a course concerning personal financial management,~~ prepared as prescribed by the appropriate Official Form; and

(B) An individual debtor in a chapter 11 case shall file the statement ~~in a chapter 11 case in which~~ if § 1141(d)(3) applies.

\* \* \* \* \*

### Committee Note

Subdivision (b)(7) is amended to relieve an individual debtor of the obligation to file a statement of completion of a personal financial management course if the course provider notifies the court that the debtor has completed the course. Course providers approved under § 111 of the Code may be permitted to file this notification electronically with the court immediately upon the debtor's completion of the course. If the provider does not notify the court, the debtor must file the statement, prepared as prescribed by the appropriate Official Form, within the time period specified by subdivision (c).

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<sup>1</sup> New material is underlined; matter to be omitted is lined through.

<sup>\*\*</sup> In addition to the amendment of Rules 1007(b) and 5009(b), Official Form 23 would be amended to clarify that the debtor should not file the form if the provider of a personal financial management course has already notified the court of the debtor's completion of the course.

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

\* \* \* \* \*

**(c) Grant of Discharge.**

(1) In a chapter 7 case, on expiration of the times fixed for objecting to discharge and for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge ~~unless~~, except that the court shall not grant the discharge if:

- (A) the debtor is not an individual;
- (B) a complaint, or a motion under § 727(a)(8) or (a)(9), objecting to the discharge has been filed and not decided in the debtor's favor;
- (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)(1) is pending;
- (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, unless the court has waived the fees under 28 U.S.C. § 1930(f);
- (H) the debtor has not filed with the court a statement of completion of a course concerning personal financial management ~~as~~ if required by Rule 1007(b)(7);
- (I) a motion to delay or postpone discharge under § 727(a)(12) is pending;
- (J) a motion to enlarge the time to file a reaffirmation agreement under Rule 4008(a) is pending;
- (K) a presumption ~~has arisen~~ is in effect under § 524(m) that a reaffirmation agreement is an undue hardship and the court has not concluded a hearing on the presumption; or
- (L) a motion is pending to delay discharge, because the debtor has not filed with the court all tax documents required to be filed under § 521(f).

\* \* \* \* \*

### Committee Note

Subdivision (c)(1) is amended in several respects. The introductory language of paragraph (1) is revised to emphasize that the listed circumstances do not just relieve the court of the obligation to enter the discharge promptly but that they prevent the court from entering a discharge.

Subdivision (c)(1)(H) is amended to reflect the simultaneous amendment of Rule 1007(b)(7). The amendment of the latter rule relieves a debtor of the obligation to file a statement of completion of a course concerning personal financial management if the course provider notifies the court directly that the debtor has completed the course. Subparagraph (H) now requires postponement of the discharge when a debtor fails to file a statement of course completion only if the debtor has an obligation to file the statement.

Subdivision (c)(1)(K) is amended to make clear that the prohibition on entering a discharge due to a presumption of undue hardship under § 524(m) of the Code ceases when the presumption expires or the court concludes a hearing on the presumption.

### **Rule 5009. Closing Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, Chapter 13 Individual's Debt Adjustment, and Chapter 15 Ancillary and Cross-Border Cases**

\* \* \* \* \*

**(b) Notice of Failure to File Rule 1007(B)(7) Statement.** If an individual debtor in a chapter 7 or 13 case is required to ~~has not filed the a~~ statement under ~~required by~~ Rule 1007(b)(7) and fails to do so within 45 days after the first date set for the meeting of creditors under § 341(a) of the Code, the clerk shall promptly notify the debtor that the case will be closed without entry of a discharge unless the required statement is filed within the applicable time limit under Rule 1007(c).

\* \* \* \* \*

### Committee Note

Subdivision (b) is amended to conform to the amendment of Rule 1007(b)(7). Rule 1007(b)(7) relieves an individual debtor of the obligation to file a statement of completion of a personal financial management course if the course provider notifies the court that the debtor has completed the course. The clerk's duty under subdivision (b) to notify the debtor of the possible closure of the case without discharge if the statement is not timely filed therefore applies only if the course provider has not already notified the court of the debtor's completion of the course.

**Rule 9006. Computing and Extending Time; Time for Motion Papers**

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**(d) ~~For Motions Papers~~ Affidavits.** A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than seven days before the time specified for such hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion. ~~and, e~~Except as otherwise provided in Rule 9023, ~~opposing affidavits~~ any written response shall ~~may be~~ served not later than one day before the hearing, unless the court permits ~~otherwisethem to be served at some other time.~~

\* \* \* \* \*

**Committee Note**

The title of this rule is amended to draw attention to the fact that it prescribes time limits for the service of motion papers. These time periods apply unless another Bankruptcy Rule or a court order, including a local rule, prescribes different time periods. Rules 9013 and 9014 should also be consulted regarding motion practice. Rule 9013 governs the form of motions and the parties who must be served. Rule 9014 prescribes the procedures applicable to contested matters, including the method of serving motions commencing contested matters and subsequent papers. Subdivision (d) is amended to apply to any written response to a motion, rather than just to opposing affidavits. The caption of the subdivision is amended to reflect this change. Other changes are stylistic.

**Rule 9013. Motions: Form and Service**

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

- (a) the trustee or debtor in possession and on those entities specified by these rules; or
- (b) the entities the court directs if these rules do not require service or specify the entities to be served if service is not required or the entities to be served are not specified by these rules, the moving party shall serve the entities the court directs.



### Committee Note

A cross-reference to Rule 9006(d) is added to this rule to call attention to the time limits for the service of motions, supporting affidavits, and written responses to motions. Rule 9006(d) prescribes time limits that apply unless other limits are fixed by these rules, a court order, or a local rule. The other changes are stylistic.

### Rule 9014. Contested Matters

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**(b) Service.** The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined under Rule 9006(d). Any written response to the motion shall be served within the time determined under Rule 9006(d). Any paper served after the motion shall be served in the manner provided by Rule 5(b) F.R. Civ. P.

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### Committee Note

A cross-reference to Rule 9006(d) is added to subdivision (b) to call attention to the time limits for the service of motions, supporting affidavits, and written responses to motions. Rule 9006(d) prescribes time limits that apply unless other limits are fixed by these rules, a court order, or a local rule.