ADVISORY COMMITTEE
ON
APPELLATE RULES

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TAB 1

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON PRIVACY, PUBLIC ACCESS, AND APPEALS

RE: COMMENTS ON THE REVISED PART VIII RULES AND AMENDMENTS TO RULES 9023 AND 9024

DATE: MARCH 20, 2013

The revised bankruptcy appellate rules—Part VIII of the Bankruptcy Rules—were published for comment in August 2012, as were related amendments to Rules 9023 and 9024. Fourteen sets of comments were submitted concerning the Part VIII rules, and one comment was submitted on Rules 9023 and 9024. This memorandum reviews the comments and provides the Subcommittee's recommendations for changes to be made to the rules as published. Because the Subcommittee believes that the changes are not of sufficient significance to require republication of any of the proposed rules, **it recommends that the Committee approve them with the suggested changes and forward them to the Standing Committee for approval at its June meeting.**

Rules 9023 and 9024

Rule 9023 (New Trials; Amendment of Judgments) and Rule 9024 (Relief from Judgment or Order) would be amended to include a cross-reference to proposed Rule 8008, which governs Indicative Rulings. The National Conference of Bankruptcy Judges commented (12-BK-008) that a cross-reference to another rule is more appropriately placed in a Committee Note than in the rule itself.

The Committee proposed these amendments in order to call attention in another relevant part of the rules to the new bankruptcy appellate rule on indicative rulings. Rule 8008 prescribes

procedures for both the bankruptcy court and the appellate court when an indicative ruling is sought. It therefore incorporates provisions of both Civil Rule 62.1 and FRAP 12.1. Because a litigant filing a post-judgment motion that implicates the indicative-ruling procedure will not encounter a rule similar to Civil Rule 62.1 in either the Part VII or Part IX rules, the Committee decided that it would be useful to include a cross-reference to Rule 8008 in the rules governing post-judgment motions.

A Committee Note may not be amended without an amendment of the rule itself, so the cross-references to Rule 8008 must be placed in the text of these existing rules. Furthermore, several comments on the Part VIII rules suggested that cross-references to other rules should not be placed just in Committee Notes because not everyone reads them, and the Subcommittee is recommending some changes to the Part VIII rules in response to those comments. The proposed amendments of Rules 9023 and 9024 are consistent with that approach.

Part VIII Rules

Many of the comments submitted on the 28 revised Part VIII rules were lengthy and detailed. They demonstrated the commenters' careful review of the published rules and provided helpful suggestions on issues of style, organization, and substance. The Subcommittee carefully reviewed all of the comments during conference calls on February 20, March 4, and March 11.

As a general matter, the Subcommittee continues to favor close adherence to the Federal Rules of Appellate Procedure except where those rules are incompatible with bankruptcy appeals. It also recommends postponing for future consideration a number of suggestions that would change existing practice or raise policy issues requiring careful consideration. The overall response to the proposed revision of the Part VIII rules was positive.

The following pages include the Committee's recommendations for changes to the rules as published and summaries of all of the comments with the Subcommittee's responses, organized by rule. In several places comments by "EG" discuss issues that the reporter is raising for the Committee's consideration. They generally concern matters that the reporter noticed in the course of preparing this memorandum after the Subcommittee's deliberations.

Both a clean copy of the Part VIII rules recommended for approval at this meeting and a comparison version (showing the proposed changes to the published version) are included with these materials. References in this memorandum to line numbers on which changes are proposed are to the comparison version.

Comments on Part VIII Rules

General Comments

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – The reference to "BAP" is jarring. It would be preferable to use "the bankruptcy appellate panel" or, if BAP is retained, insert "the" in front of the acronym.

- The Committee carefully considered how to refer to bankruptcy appellate panels and settled on "BAP," a term familiar to most bankruptcy practitioners, in order to avoid excessive wordiness. In many of the rules, the term BAP is used in a series, such as in Rule 8010(c) ("in the district court, BAP, or court of appeals"). The article "the" refers to all three courts and does not need to be repeated. When reference is made only to the BAP, an article is used. *See, e.g.,* Rule 8026(a)(1) ("a BAP" . . . "the BAP").

12-BK-008—National Conference of Bankruptcy Judges – The NCBJ applauds and endorses the revisions to Part VIII. Bringing the Part VIII rules more into line with the structure and organization of the Federal Rules of Appellate Procedure will reduce confusion and improve the quality of bankruptcy appellate practice.

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – The proposed changes are welcome and reflect the fact that we are in the twenty-first century and electronic filing is here to stay. They will make the entire bankruptcy appellate process run more efficiently and effectively.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – The product is impressive and a great leap forward for bankruptcy appellate procedure.

Rule 8001

No changes are proposed.

Comments

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – The phrase "United States" before "district court" in subdivision (a) is unnecessary.

- The wording of the proposed rule is consistent with FRAP 1(a)(1) ("These rules govern procedure in the United States courts of appeals.").

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Subdivision (c) refers to sending a document, but documents are filed with courts, not sent to them. The language of FRAP 1(a)(2) would be preferable: "When these rules provide for filing a motion or document . . . ."

- Subdivision (c) is an all-purpose rule that governs the transmission of documents in a variety of contexts. Because it is not limited to transmission of documents to courts, the more general language ("send") is used.

Rule 8002

Proposed change:
In subdivision (c), delete "to a district court or BAP" after "bankruptcy court" on line 58.

The change is proposed in response to the following comments:

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – In subdivision (c)(1), the phrase "to a district court or BAP" is unnecessary.

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – Same.

- The phrase can be deleted without any effect on the meaning of the rule. The other provisions of Rule 8002 do not include this phrase.

Other comments

12-BK-004—Thomas R. Morris – The inmate mailbox rule prescribed by subdivision (c) should be made subject to the exceptions provided for in proposed Rule 8002(d)(2) (*"When the Time[to Appeal] May Not be Extended"*). These exceptions help to ensure the finality of certain types of bankruptcy court orders upon which transactions often rely. If the inmate mailbox rule is not made subject to the same exceptions, a transaction that depends on the finality of an order could be held hostage to the possibility of an inmate appeal or at least thrown into uncertainty if an inmate appeal becomes known after the expiration of the regular appeal period.

12-BK-011—Debtor/Creditor Rights Comm. of the Business Law Section of the State Bar of Michigan – The Committee agrees with the comment of Mr. Morris. Unlike district court cases in which all of the parties are generally known, the active parties to a contested matter in a bankruptcy court may not be aware that a creditor or equity holder is an inmate. They might therefore believe that an order is final 14 days after its entry, only to have a notice of appeal that was filed by an inmate received by the court after that date. The inmate appeal rule should not be added to Rule 8002, but, if it is, it should be limited to inmates who had previously opposed entry of the order from which an appeal is taken and disclosed their status as an inmate.

- This provision was added to mirror FRAP 4(c). The instances of inmate appeals in bankruptcy cases are likely to be rare.

12-BK-008—National Conference of Bankruptcy Judges – The order of proposed Rules 8002 and 8003 should be reversed. That reorganization would be consistent with the order of FRAP 3 and 4 and would be more logical.

- The rule governing the time for filing a notice of appeal must remain as Rule 8002 because 28 U.S.C. § 158(c)(2) specifically refers to it ("An appeal under subsections (a) and (b) of this section shall be taken . . . in the time provided by Rule 8002 of the Bankruptcy Rules.").

The order of subdivisions (c) and (d) should be reversed. In FRAP 4 the provision regarding extensions of time to appeal (Rule 4(a)(5)) precedes the provision about the timing of inmate appeals (Rule 4(c)). Moreover, motions for extensions of time occur much more frequently in bankruptcy cases than do inmate appeals, so the reverse order of the provisions is more logical.

- The rule as published addresses the time for all parties to file notices of appeal before addressing extensions of those time periods.

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – Subdivision (a)(2) governs the premature filing of a notice of appeal – one filed after the bankruptcy court "announces" a decision or order but before the entry of judgment. To clarify that the rule can apply when the court issues a written decision, the phrase "orally or in writing" should be inserted after "announces."

- The published rule tracks the language of FRAP 4(a)(2). The term "announcement" is also used in the current rule—Rule 8002(a)—without specifying that the announcement of the decision may be either oral or written.

Subdivision (b)(1) should recognize that parties frequently make motions for reconsideration and bankruptcy courts act on them, even though the rules do not specifically authorize this motion. A motion to reconsider should be added to the list of motions that toll the time for filing a notice of appeal.

- The published rule is consistent with the current rule—Rule 8002(b)—and FRAP 4(a)(4). This appellate rule does not seem to be the appropriate place for authorizing motions to reconsider.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Rule 8002 should include a provision like FRAP 4(a)(6), which permits the district court to reopen the time to file an appeal for someone who did not receive notice of entry of the judgment within 21 days after its entry. This rule applies to bankruptcy cases appealed from the district court to the court of appeals, and there is no reason that it should not also be available for the first level of appeal. The frequently made argument regarding the need for expedition of bankruptcy appeals is overstated, except with regard to the types of judgments listed in proposed Rule 8002(d)(2) (no extension of time to appeal allowed). Reopening would not occur frequently, but it would provide an incentive for prevailing counsel to make sure that losing parties receive formal notice of a judgment.

- The Subcommittee recommends that this issue be listed for future Committee consideration. Given the controversy provoked a few years ago by the extension of the time to file a notice of appeal from 10 to 14 days, a proposal for a rule allowing a party to seek the reopening of the time to appeal up to180 days after a judgment was entered would likely be met with substantial opposition.

It would be useful for Rule 8002 to have a provision similar to FRAP 4(a)(7), which addresses when a judgment or order is entered for purposes of Rule 4(a). The provision helps clarify timing issues presented by the separate-document requirement.

- The Subcommittee recommends that this issue be listed for future Committee consideration.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – It appears that "of the judgment, order, or decree" was cut off from the end of the sentence.

- The proposed provision tracks the language of FRAP 4(a)(2).

Subsection (b)(3) addresses appealing the order disposing of one of the listed motions. The title should reflect that the rule addresses appealing the order, not the motion.

- The title was added by the style consultant, Professor Joe Kimble. "Appealing the Motion" is shorthand for "Appealing the Ruling on the Motion."

Rule 8003

Proposed changes:
(1) In subdivision (c), change references to "serving" and "service" to "transmitting" and "transmission," and revise the Committee Note accordingly.

The change is proposed in response to the following comments:

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – The title of subdivision (c) refers to "serving" the notice of appeal, and subdivision (c)(3) refers to noting service on the docket. Subdivision (c)(1), however, requires the clerk to "transmit" the notice of appeal. "Transmit" should be substituted for "serve."

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Same.

12-BK-040—Bankruptcy Clerks Advisory Group – Same.

EG: I suggest an alternative revision for consideration by the Committee. I recommend changing "transmit" to "serve," rather than the other way around, so that the significance of the action taken by the clerk is clear. Rule 8001(c) provides a general rule requiring electronic transmission that applies whether or not a particular rule uses the word "transmit." Rule 8011 refers to "serve" and "service" throughout. Moreover, 28 U.S.C. § 158(c)(1) provides that a party other than the appellant must make an election to have an appeal heard by the district court, rather than the BAP, "not later than 30 days after service of the notice of appeal." And Rule 8006 refers in several places to "service of a notice of appeal under Rule 8003(c).

Under this alternative, subdivision (c) would read as follows:

1 (c) SERVING THE NOTICE OF APPEAL.

2 (1) *Serving Parties and Transmitting to the United States Trustee*. The

3 bankruptcy clerk must serve the notice of appeal on counsel of record for each party to

4 the appeal, excluding the appellant, and transmit it to the United States trustee. If a party

5 is proceeding pro se, the clerk must send [mail] the notice of appeal to the party's last

6 known address. The clerk must note, on each copy, the date when the notice of appeal

7 was filed.

8 (2) *Effect of Failing to Serve or Transmit Notice*. The bankruptcy clerk's failure

9 to serve notice on a party or transmit notice to the United States trustee does not affect

10 the validity of the appeal.

11 (3) *Noting Service on the Docket*. The clerk must note on the docket the names

12 of the parties served and the date and method of the service.

The Committee Note would remain as published.

(2) In subdivision (d)(2), lines 61-62, "case and the title of the adversary proceeding, if any" is substituted for "court action."

The change is proposed in response to the following comments:

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – Subdivision (d)(2) is unclear. What does "title of the bankruptcy court action" mean? What about the appellee's name? The rule should either specify more clearly the caption that the appellate court must use or provide more generally for the creation of an appropriate caption for the appeal.

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – Parties and BAP and district clerks would benefit from guidance about how a docket's title ought to look under the rule. The Advisory Committee should alert the Bankruptcy Court Administrative Division and the District Court Administrative Division, as well as pertinent AO advisory groups, that this is an issue upon which guidance should be provided to clerks and parties well in advance of the rule's effective date.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – The reference to the action is not clear in a bankruptcy context. When we docket an appeal, we create a caption that has the main case information at the top and the information about the appellant and appellee below. We give the adversary proceeding information when it is available. Rather than try to capture all the permutations in a rule, revise subdivision (d)(2) to provide that "the clerk must docket the appeal and identify the appellant."

12-BK-040—Bankruptcy Clerks Advisory Group – Agrees with Judge Kressel's comment.

Other comments

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – The meaning of the concluding sentence of subdivision (b)(1)—"They may then proceed on appeal as a single appellant"—is unclear.

12-BK-040—Bankruptcy Clerks Advisory Group – Agrees with Judge Kressel's comment.

- This language is taken directly from FRAP 3(b)(1). It allows multiple parties with sufficiently similar interests to join together for all aspects of an appeal, including filing a joint brief and presenting an oral argument on behalf of all of the joint appellants.

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – Subdivision (c)(1) should require the appellant rather than the bankruptcy clerk to serve the notice of appeal on the parties.

12-BK-008—National Conference of Bankruptcy Judges – Same. If the service duty remains on the bankruptcy clerk, Rule 8004(c)(1) concerning interlocutory appeals should be made consistent with Rule 8003(c)(1).

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – Same. If the service duty remains on the bankruptcy clerk, service should not be required on entities that received electronic notice of the docketing of the notice of appeal in the bankruptcy court. The following language should be added to the end of the first sentence of (c)(1) after "excluding the appellant": "and any entity who received electronic notice of the docketing of the notice of appeal at the time the notice of appeal was docketed."

12-BK-040—Bankruptcy Clerks Advisory Group – Agrees with Judge Kressel's and the NCBJ comments.

- The published rule follows the current practice of service by the clerk that is provided for by Rule 8004 and FRAP 3(d).

12-BK-010—The States' Association of Bankruptcy Attorneys – Subdivision (d)(1) should be revised to delay the transmission of the notice of appeal until the time has expired for all parties to the appeal to make an election to have the district court, rather than the BAP, hear the appeal. This change would avoid requiring the BAP to transfer an appeal to the district court if the appellee elects to have the district court hear it.

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – Sometimes the bankruptcy clerk will not have transmitted the notice of appeal to the BAP when an appellee files an election to have the district court hear the appeal. The rule should reflect that possibility by stating three requirements for transmission of the notice of appeal to the BAP: a BAP has been established for appeals from that district, the appellant has not elected to have the district court hear the appeal, and [new language] "no other party has yet filed an election to have the district court hear the appeal."

- SABA is correct that the published rule can result in the transmission of the notice of appeal to the BAP and the appeal being docketed there, only to be followed days later by the transfer of the appeal to the district court. While that may be inefficient, the Committee determined that it would be beneficial to have appeals promptly docketed in an appellate court, as occurs under FRAP 3(d) and 12(a). SABA's proposal could delay docketing of the appeal for 30 days.

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – Subdivision (a)(1) is redundant and should be removed.

- The provision is not redundant. It specifies what action must be taken to appeal—file a timely notice of appeal—whereas Rule 8002(a)(1) specifies the time period for doing so. As some have commented, it might make more sense to reverse the order of these rules, but as explained above, the time provision must remain in Rule 8002.

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – The Committee Note should address what happens if an appeal is docketed in a BAP and a motion is filed in that court before the appellee's time to elect a district court has expired. He suggests adding the following discussion:

If the appeal has been docketed in the BAP under subdivision (d), the BAP is to rule on any motion presented to it unless and until the appellee timely elects under 28 U.S.C. § 158(c)(1)(B) to have the appeal heard by the district court. Once an appellee timely elects under § 158(c)(1)(B) to have the appeal heard by the district court, Rule 8005(b) governs the BAP clerk's duty to transmit the appellate documents, including any motion, to the district clerk.

- This discussion does not seem appropriate in the Committee Note for Rule 8003, which addresses how to take an appeal as of right and the docketing of that appeal.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Subdivision (c) should require a notice of appeal that conforms to the Official Form; a copy of the order, the names and addresses of the parties and their attorneys; and the fee**.**

- Subdivision (c) by its terms requires a notice of appeal that conforms substantially to the appropriate Official Form; the judgment, order, or decree appealed from; and the fee. Official Form 17 (Notice of Appeal) requires the appellant to provide the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys.

12-BK-040—Bankruptcy Clerks Advisory Group – Subdivision (c)(1) requires the clerk to note on each copy of the notice of appeal the date when it was filed. This requirement is unnecessary because the electronic docket within CM/ECF will state the filing date.

- This information needs to be provided to some pro se parties.

BK-034—Oregon State Bar Debtor-Creditor Section Local Rules and Forms Committee – The change to Rule 8003 removing the delay of docketing an appeal provides greater clarity regarding the timing of the docketing of the appeal and will save bankruptcy clerks time and resources.

Rule 8004

Proposed changes:
(1) In subdivision (c)(2), make the same change regarding the title under which an appeal is docketed that is proposed for Rule 8003(d)(2).

The change is proposed in response to the following comments:

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – Subdivision (c)(2) presents the same issue discussed above concerning the caption used for docketing an appeal.

12-BK-008—National Conference of Bankruptcy Judges – Same. A more detailed provision based on the distinction between "cases" and "adversary proceedings" would be better.

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – Subdivision (c) presents the same issues that Rule 8003 raises regarding the title that should be used for docketing the appeal.

12-BK-040—Bankruptcy Clerks Advisory Group – Same.

(2) Delete the last sentence of subdivision (c)(3) on lines 45-46.

The change is proposed in response to the following comment:

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Subdivision (c)(3) should provide that the appellate court "may" (not "must") dismiss the appeal if leave to appeal is denied. We sometimes deny such motions as moot because the order appealed from was final, not interlocutory.

- Neither current Rule 8003 nor FRAP 5 contains the sentence that the comment refers to.

Other comments

12-BK-010—The States' Association of Bankruptcy Attorneys – Subdivision (c)(1) presents the same issue discussed above concerning the time for the bankruptcy clerk to transmit the notice of appeal to the BAP for docketing the appeal.

- See the discussion regarding SABA's comment about Rule 8003(d)(1).

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – It is not clear whether the harmless error provisions of proposed Rule 8003(a)(2) apply to this rule. Perhaps the Committee Note should indicate that they do apply.

- The comment refers to the provision of Rule 8003 that states that an appellant's failure to take any step other than timely filing a notice of appeal does not affect the validity of an appeal. Subdivision (d) of this rule might be viewed as an equivalent provision. It allows the appellate court to treat a notice of appeal as a motion for leave to appeal if a motion is not filed (or the court can order the appellant to file a motion). Thus, like Rule 8003, Rule 8004 suggests that filing a notice of appeal is the only essential requirement.

Rule 8005(d) requires a motion for leave to appeal that is not accompanied by a notice of appeal to be treated as a notice of appeal for purposes of determining the timeliness of a statement of election to have a district court hear an appeal. Rule 8004(d), however, is silent about whether a motion for leave to appeal may be treated as a notice of appeal. The provision should expressly state that such a motion may be treated as a notice of appeal. The result should not differ based on whether or not a BAP has been authorized.

- Rule 8005(d) does not provide that in districts in which an appeal may be taken to a BAP, a motion for leave to appeal may be treated for purposes of Rule 8004 as a notice of appeal. Instead, it prevents an appellant who seeks leave to appeal and does not initially file a notice of appeal from getting additional time to make an election. The absence of a provision in Rule 8004(d) authorizing a motion for leave to appeal to be treated as a notice of appeal means that it may not be so treated. The proposed rule, although consistent with existing Rule 8001(b), could create a trap for litigants more familiar with the appellate rules than with the bankruptcy rules. FRAP 5 requires a party seeking leave to appeal to file a petition for permission to appeal, but does not require the filing of a notice of appeal.

  The Subcommittee wants to call the Committee's attention to this issue for consideration of whether Rule 8004 should conform more closely to FRAP 5. Set out below is an alternative Rule 8004 that eliminates the requirement of a separate notice of appeal and requires a motion for leave to appeal to include information that would be in a notice of appeal. Adoption of this alternative version of Rule 8004 would likely require its republication. Adoption of this change would also require elimination of Rule 8005(d) and the portion of the Committee Note referring to it.

  If the Committee wishes to go forward with the alternative versions of Rules 8004 and 8005, it might request adoption now of the current versions while suggesting publication of the alternative versions in 2013, or withhold any action on the alternate versions now, with the understanding that publication would be sought for 2014, together with any additional further amendments.

Rule 8004. Appeal by Leave—How Taken; Docketing the Appeal

(a) MOTION FOR LEAVE TO APPEAL. To appeal from an interlocutory order or decree of a bankruptcy court under 28 U.S.C. § 158(a)(3), a party must file with the district or BAP clerk a motion for leave to appeal within the time allowed by Rule 8002 for filing a notice of appeal. Unless the motion is served electronically using the court's transmission equipment, it must include proof of service in accordance with Rule 8011(d).

(b) CONTENTS OF THE MOTION; RESPONSE.

(1) *Contents*. A motion for leave to appeal under 28 U.S.C. § 158(a)(3) must include the following:

(A) the facts necessary to understand the question presented;

(B) the question itself;

(C) the relief sought;

(D) the reasons why leave to appeal should be granted;

(E) a copy of the interlocutory order or decree and any related opinion or memorandum; and

(F) the names of all parties to the interlocutory order or decree from which appeal is sought and the names, addresses, and telephone numbers of their respective attorneys.

(2) *Response*. A party may file with the district or BAP clerk a response in opposition or a cross-motion within 14 days after the motion is served.

(3) *Oral Argument Not Required.* The motion and any response or cross-motion are submitted without oral argument unless the district court or BAP orders otherwise.

(c) GRANT OF LEAVE; FEES; FILING THE RECORD.

(1) *Grant of Leave to Appeal*. A notice of appeal need not be filed. The date when the order granting leave to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(2) *Payment of Fees*. Within 14 days after the entry of the order granting leave to appeal, the appellant must pay the bankruptcy clerk all required fees.

(2) *Filing the Record.* The bankruptcy clerk must notify the district or BAP clerk once the appellant has paid the fees. Upon receiving the notice, the district or BAP clerk must enter the appeal on the docket. The record must be designated, transmitted, and filed in accordance with Rules 8009 and 8010.

(e) DIRECT APPEAL TO A COURT OF APPEALS. If leave to appeal an interlocutory order or decree is required under 28 U.S.C. § 158(a)(3), an authorization of a direct appeal by the court of appeals under 28 U.S.C. § 158(d)(2) satisfies the requirement.

12-BK-031—Insolvency Law Comm. of the Business Law Section of the State Bar of California – Subdivision (b)(2) provides that a response in opposition or a cross-motion to a motion for leave to appeal is to be filed in the district court or BAP even though the original motion is filed in the bankruptcy court. This may cause confusion. The rule should be modified to provide that a response or cross-motion must be filed within 14 days after the bankruptcy clerk transmits the notice of appeal, rather than after the motion is served.

- Rules 8003 and 8004 do not provide that the bankruptcy clerk must notify the parties of the date when the notice of appeal is transmitted to the appellate court. The date of service of the motion for leave to appeal is therefore more likely to be known by the parties.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Rule 8004 should specify that motions for leave to appeal are not governed by Rule 9014. This addition would parallel proposed Rule 8006(f)(4) (a request for certification of a direct appeal is not governed by Rule 9014).

- The provision in Rule 8006(f)(4) is not necessary and should be deleted. Rule 9014 applies to contested matters "not otherwise governed by these rules."

The rule should clarify the power of the bankruptcy court during an interlocutory appeal. This issue causes considerable confusion among courts. *See In re Rains*, 428 F.3d 893, 904 (9th Cir. 2005) (holding that the bankruptcy court retained jurisdiction to enforce an order that had been appealed so long as the court did not alter or expand it).

- Like FRAP 5, Rule 8004 governs the procedure for seeking to appeal by leave. It is beyond the scope of the rule to specify the scope of the bankruptcy court's jurisdiction during the period before the appellate court rules on the motion for leave to appeal.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Subdivision (a) should refer to "an appeal from an interlocutory order, decree, or judgment," not just "order or decree." We frequently see attempts to appeal a partial judgment, which can be interlocutory.

- Although current Rule 8001(b) refers to an "interlocutory judgment," the statute— 28 U.S.C. § 158(a)(3)—just refers to "interlocutory orders and decrees." The proposed rule is consistent with the statute.

Subdivision (a)(3) requires the notice of appeal to be accompanied by proof of service unless it is served electronically. There is not a similar provision under Rule 8003. Moreover, the proof of service only applies to the notice of appeal and not to the motion for leave to appeal. It would be better to include in this rule the language of Rule 8003(c).

- There is an inconsistency between Rule 8003 and Rule 8004. Rule 8003(c) requires the bankruptcy clerk to serve the notice of appeal, whereas Rule 8004(a) places that duty on the appellant. This difference is a carryover from existing Rule 8001(a) ("Each appellant shall file a sufficient number of copies of the notice of appeal to enable the clerk to comply promptly with Rule 8004) and Rule 8001(b) (the notice of appeal must be "accompanied by . . . proof of service in accordance with Rule 8008"). Because the motion for leave to appeal must accompany the notice of appeal, the proof of service applies to both documents. The Subcommittee recommends that the Committee consider in the future whether the service requirement should be the same in both rules.

12-BK-040—Bankruptcy Clerks Advisory Group – Subsection (a)(3) uses the term "electronic transmission equipment," which is not used in the bankruptcy court system. The sentence should be revised to state, "Unless served electronically by the court . . . ."

- The term "the court's transmission equipment" follows the language of FRAP 26(c)(2). *See also* Fed. R. Civ. P. 5(b)(3) ("the court's transmission facilities")..

Subdivision (c)(3) provides that the "motion and any response or cross-motion are submitted without oral argument unless the district court or BAP orders otherwise." The wording suggests that there may be situations in which oral argument would be allowed. The Committee Note is clearer: "Unless the district court or BAP orders otherwise, no oral argument will be held on the motion."

- The two sentences mean the same thing: the general rule is no oral argument, but the court can allow it. The phrasing of the proposed rule tracks FRAP 5(b)(3) and current Rule 8003.

BK-034—Oregon State Bar Debtor-Creditor Section Local Rules and Forms Committee – The change to Rule 8004 removing the delay of docketing an appeal provides greater clarity regarding the timing of the docketing of the appeal and will save bankruptcy clerks time and resources.

Rule 8005

Proposed changes:
(1) In subdivision (a), change "that conforms substantially to" to "using" in order to mandate the use of the Official Form that for appellants combines the Notice of Appeal and the Statement of Election. Make conforming changes to the Committee note.

The change is proposed in response to the following comments:

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – Subdivision (a) should emphasize that the official election form needs to be a separate document from the notice of appeal. The separate document requirement should be retained.

12-BK-010—The States' Association of Bankruptcy Attorneys – Is there an official form, or is it still being drafted? The election form should be combined with the notice of appeal. The current separate statement requirement causes confusion and, when not followed, leads to the voiding of an election to have the appeal heard in the district court. Putting the two forms together will ensure that they are filed at the same time.

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – Subdivision (a) should make clear whether the statement of election must be set forth in a separate document. The current separate document requirement should be retained.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Subdivision (a) does not specify whether the election must be made by a separate document. Requiring a separate document makes things much clearer for the courts and parties.

12-BK-040—Bankruptcy Clerks Advisory Group – Subdivision (a) refers to an Official Form, but there is no such form.

- The Committee previously decided to eliminate the separate document requirement and to propose Official Forms for making an election to have the district court hear an appeal. As is discussed under agenda item 9(B), two new Official Forms are being recommended for publication. An appellant is required to make an election at the time it files its notice of appeal. In order to facilitate compliance with that statutory requirement, proposed Form 17A places the statement of election on the notice-of-appeal form. Proposed Form 17B is the form an appellee would use to make an election.

(2) Add "and notify the bankruptcy clerk of the transfer" at the end of subdivision (b). Make conforming changes to the Committee Note.

The change is proposed in response to the following comments:

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – The provision in subdivision (b) for the BAP clerk to transmit documents to the district clerk may not be well received by district clerks. They are accustomed to receiving documents from bankruptcy clerks. The current practice (at least in the 8th Cir. BAP) of having the BAP clerk return the appeal to the bankruptcy clerk, who then transmits it to the district clerk, should be retained or allowed as an acceptable alternative.

12-BK-040—Bankruptcy Clerks Advisory Group – Subdivision (b) should be revised to require notification of the bankruptcy clerk if the BAP clerk transmits the record to the district clerk.

(3) Add a sentence to the first paragraph of the Committee Note explaining that the rule only applies in districts in which appeals to a BAP are authorized.

The change is proposed in response to the following comment:

12-BK-040—Bankruptcy Clerks Advisory Group – The title of the rule does not indicate that it does not apply in every circuit. The Committee Note should clarify that not every circuit has a BAP.

Other comments:

12-BK-010—The States' Association of Bankruptcy Attorneys – Given the suggestion for revising proposed Rule 8003 to delay transmittal of the appeal until all parties' time to elect a district court has expired, subdivision (b)(1) should be revised to eliminate the possibility of a BAP clerk transmitting an appeal to the district clerk. If no parties file a statement of election, the bankruptcy clerk will transmit the appeal to the BAP clerk. If any party does elect a district court, the bankruptcy clerk will send the appeal to the district clerk.

- See the discussion of SABA's comment about Rule 8003(d)(1).

Subdivision (c) requires a party to seek the determination of the validity of an election in the "court where the appeal is then pending." In light of some case law that says that an invalid election is a nullity, the draft language is ambiguous. It should be revised to require a motion in the "court to which the bankruptcy court has transmitted the documents pursuant to the provisions of subsection (b)."

- If SABA's suggestion concerning Rule 8003(d)(1) is not accepted, there will be cases in which the BAP clerk has transmitted documents to the district court, and the appellant challenges the validity of the appellee's election. The language proposed by the comment would not capture that situation because the bankruptcy clerk would have transmitted the documents to the BAP.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Subdivision (c) requires the motion to be filed where "the appeal is then pending." "Pending" is a term that only applies to direct appeals. To use the term here suggests that the bankruptcy court will consider the matter. Since the motion to determine the validity of an election does not have to be filed until 14 days after the statement of election is filed, the district court or BAP should decide the motion. Substitute "docketed" for "pending." The Committee Note's statement that "Nothing in the rule prevents a court from determining the validity of an election on its own motion" suggests that a bankruptcy court could make this determination after an appeal has been docketed at the BAP.

- The basis for the statement about the meaning of "pending" is unclear. The intent of the provision is that the appellate court, not the bankruptcy court, will decide the motion. As for the statement in the Committee Note, the rule itself does not prevent a bankruptcy court from determining the validity of an election (for

example, if the election form is not properly filled out). But if the appeal is already pending in the district court or BAP, jurisdictional doctrines may prevent the bankruptcy court from making the determination**.**

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – There are two problems with subdivision (c). First, it does not deal with the situation in which the bankruptcy court erroneously transmits a notice of appeal to the district court even though no election was made. In that case there should be a longer period of time to contest the transmittal to the district court. Second, even when a statement of election is filed, 14 days to contest the election is not long enough. The time should be the same as the appellee's time to file an election.

- With regard to the first point, subdivision (c) only purports to address situations in which a statement of election was filed. The rule neither can nor should address all situations in which errors are made. Regardless of the rule, it is likely that the district court would entertain a motion to transfer an appeal to the BAP if no party filed a statement of election. The Subcommittee concluded that 14 days is a sufficient period for seeking a determination regarding the validity of an election.

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – If Rule 8003(d)(1) is revised to take account of the possibility that an appellee may file a statement of election before the bankruptcy clerk transmits the notice of appeal to the BAP, subdivision (b) should be revised by adding the following sentence after the first sentence of the published rule: "Once the bankruptcy clerk has transmitted an appeal for docketing in the BAP, a party other than the appellant must file any statement of election with the BAP clerk." The Committee Note should also be revised to reflect this change.

- The Subcommittee is recommending that Judge Teel's suggestion for revising Rule 8003(d)(1) not be adopted, so there is no need to revise subdivision (b) of this rule.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – The rule does not retain the provision of current Rule 8001(e)(2), which provides for the withdrawal of an election with the district court's acquiescence.

- The comment is correct. The Subcommittee recommends that this issue be listed for future Committee consideration.

Rule 8006

Proposed changes:
(1) In subdivision (b), add "under Rule 8002" after "effective date" on lines 13-14.

The change is proposed in response to the following comment:

12-BK-010—The States' Association of Bankruptcy Attorneys – Two cross-references to other rules should be added to subdivision (b). The second sentence should state that "For purposes of this rule, a matter remains pending in the bankruptcy court for 30 days after the effective date, pursuant to Rule 8002, of the first notice of appeal . . . ." The last sentence should read, "A matter is pending in the district court or BAP thereafter upon the valid election in accordance with Rule 8005."

- The Subcommittee recommends adding the first cross-reference. Although the Committee Note refers to Rule 8002 and its provision for the delayed effectiveness of a notice of appeal in some circumstances, many people do not read Committee Notes. The Subcommittee concluded that the second suggested cross-reference should not be added. In circuits with no BAP, there will be no election. And even in circuits with a BAP, there is no reason to refer to an election in this provision.

(2) In subdivision (f)(4), delete "not governed by Rule 9014 and are" in lines 71-72.

This change is proposed in response to the comment, discussed on page 12, that was submitted by Judge Klein concerning Rule 8004.

(3) At the end of subdivision (g), add "in accordance with F.R. App. P. 6(c)."

This change is proposed in response to the following comments:

12-BK-008—National Conference of Bankruptcy Judges – Subdivision (g) should make clear that the request for permission to take a direct appeal filed with the circuit clerk is a request under FRAP 5. It would be helpful to parties to specify the applicable appellate rule.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Same.

12-BK-040—Bankruptcy Clerks Advisory Group – Agrees with the NCBJ comment.

- FRAP 6(c) was published at the same time as the Part VIII rules. It prescribes the procedure for requesting permission of the court of appeals to hear a direct appeal, and it incorporates all of FRAP 5 except (a)(3). The Subcommittee concluded that the cross-reference should be added to the rule even though it is discussed in the Committee Note.

(4) Add "with the circuit clerk" after "timely filed" in the next-to-the-last line of the first paragraph of the Committee Note.

This change is proposed in response to the following comment:

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Add "with the circuit clerk" to the first paragraph of the Committee Note after "a request for permission to appeal has been timely filed."

Other comments:

12-BK-008—National Conference of Bankruptcy Judges – The rule is not organized in a logical order. It should be reorganized as follows: (e), (f), (c), (d), (b), (a), and (g).

12-BK-040—Bankruptcy Clerks Advisory Group – Agrees with the NCBJ comment.

- The Subcommittee disagrees with the comments. The logic of the organization of the proposed rule is as follows: It begins by stating what is required for an effective certification—(a). Then it prescribes in what court a matter is pending for purposes of this rule—(b). The rule then addresses the various ways in which a certification may be made: by all of the parties—(c) or by the court. Subdivision (d) specifies which court may make a certification, (e) addresses a certification on the court's own motion, and (f) addresses a certification by the court on request by either a party or a majority of the appellants and a majority of the appellees. Finally (g) addresses what happens in the court of appeals following a certification.

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – Subdivision (d), in combination with subdivision (b), gives a bankruptcy court only 30 days after the effective date of the first notice of appeal, to certify a direct appeal. That is not enough time for the court that will be most knowledgeable about the case to make a decision. Either Rule 9006 should be amended to allow the bankruptcy court to extend this time period, or the period in which the case is deemed to remain pending in the bankruptcy court for purposes of this rule should be extended to at least 60 days. When a majority of appellants and appellees request a certification, they have 60 days after the entry of judgment to do so. Midway through this time period, the court that can make the certification will change, causing confusion.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – If a request for certification is made within 30 days after the notice of appeal, but the bankruptcy court does not rule on it within that time period, the bankruptcy court loses jurisdiction to certify the appeal. The rule does not make clear how the bankruptcy court would transmit the motion to the appropriate appellate court.

- The published rule tried to strike an appropriate balance between allowing the bankruptcy court to have time to decide whether to certify a direct appeal and recognizing that the appeal will otherwise be proceeding in the district court or BAP. The 60-day time period for requests for certification is prescribed by 28 U.S.C. § 158(d)(2)(E). As the proposed rule is currently written, it could happen that the court with authority to enter the certification would change after a request was filed, but before it was ruled on. When the request is made by "a majority of the appellants and a majority of appellees (if any)," that shift in courts probably will not be significant because the statute requires the bankruptcy court, district court, or BAP to enter the certification. No deliberation is required. Either the bankruptcy court could enter the certification quickly, or the appellate court could

enter it without having to know much about the case. But when the request is made by "a party," the court must determine that one of the statutory circumstances supporting a direct appeal exists. If a party filed a request on the twenty-fifth day after the judgment was entered, the bankruptcy court would have only a few days to rule on the request, assuming that the notice of appeal was promptly filed and that it became immediately effective. If the court did not rule on the request during the 30 days after the notice of appeal became effective, the ruling would have to be made by the district court or BAP. That, however, is a possibility that the statute allows. The Subcommittee concluded that the rule does not need to specify how the motion gets transmitted to the appellate court.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Subdivision (c) should provide an opportunity for the bankruptcy court to comment on the proceeding's suitability for direct appeal when a certification is jointly made by all appellants and appellees.

- The statutory provision that this provision implements is unusual in that it permits the parties to make the certification that a court otherwise is required to make for a direct appeal to the court of appeals. Subdivision (e)(2) provides that a party may file a supplemental statement regarding the merits of certification when the court makes the certification on its own motion. It might make sense for the rule to provide the court a similar opportunity when the parties make the certification. Although the joint certification procedure appears to be rarely invoked, the Subcommittee recommends that the Committee consider the issue in the near future.

Rule 8007

Proposed changes:
(1) Change the order in which the courts are listed in the title of subdivision (b).

The change is proposed in response to the following comment:

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – The title of subdivision (b) should be revised to state, "Motion in Appellate Court," or the order of the courts should be reversed so that the rarest situation is not listed first.

- The proposed Part VIII rules do not use the term "appellate court" because of the potential ambiguity of the term. The Subcommittee recommends that the title be reworded as follows: "Motion in the District Court, BAP, or Court of Appeals on Direct Appeal."

(2) In subdivision (b)(1), delete "or where it will be taken" in lines 21-22.

The change is proposed in response to the following comments:

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – Although it is appropriate to allow a motion for stay or other relief to be made in the bankruptcy court before a notice of appeal is filed, as subdivision (a)(2) provides, a notice of appeal should be required before an appellate court can hear such a motion. That is how the appellate court obtains jurisdiction. The rule does not explain how the motion gets before the appellate court if no notice of appeal has been filed.

12-BK-040—Bankruptcy Clerks Advisory Group – Agrees with Judge Kressel's comment.

- The provision in (a)(2)—"The motion may be made either before or after the notice of appeal is filed—is not in either current Bankruptcy Rule 8005 or in FRAP 8. Its purpose, insofar as the bankruptcy court is concerned, is to clarify that a bankruptcy court retains jurisdiction to rule on a motion for a stay pending appeal even after a notice of appeal has been filed. That rule is consistent with the case law. A search, however, turned up no authority concerning whether a notice of appeal must be filed before an appellate court may rule on a motion for a stay pending appeal. As published, subdivision (b)(1) suggested that the appellate court does have that authority. The Subcommittee recommends eliminating that suggestion.

A conforming amendment is proposed for the Committee Note.

(3) In subdivision (e)(1), substitute "order the continuation of" for "continue."

EG: This proposed change does not respond to a comment. Instead, in adding a discussion of this provision to the Committee Note, I concluded that the word "continue" in subdivision (e)(1) is ambiguous. I had understood the rule to mean that the bankruptcy court could either suspend or go forward with other proceedings in the bankruptcy case while a matter was on appeal. I then became confused about whether that was a correct reading or whether "continue" meant postpone to another date (i.e. order a continuance). I then saw that current Rule 8005 is worded "order the continuation of," and that is how this rule was originally drafted. The change to "continue" was made by the style consultant. I believe that it is a substantive change that should not be made.

(4) Add a discussion of subdivision (e) in the Committee Note.

The change is proposed in response to the following comment:

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – If the intent of subdivision (e) is to override the doctrine of exclusive appellate jurisdiction, the rule or Committee Note should be more explicit.

- This provision carries over a provision of current Rule 8005. The authority in paragraph (1) refers to the underlying bankruptcy case, not the proceeding or matter on appeal. The Committee Note lacks any discussion of this subdivision.

Other comments:

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – Doesn't subdivision (c) need to provide for the approval by the bankruptcy court of the bond after it is filed there?

- Subdivision (c) tracks the language of current Bankruptcy Rule 8005 and FRAP 8(a)(2)(E), and neither rule refers to the approval of the bond by the bankruptcy court. The need for that approval is just implied.

12-BK-010—The States' Association of Bankruptcy Attorneys – Subdivision (d) should except all governmental units, not just the United States, from the bond requirement.

- The proposed provision is consistent with current Rule 8005 and Fed. R. Civ. P. 62(e) in limiting the exception to the United States. Neither FRAP 7 ("Bond for Costs on Appeal in a Civil Case") nor FRAP 8 expressly provides an exception for the United States from a bond requirement, although the Wright and Miller treatise suggests that courts of appeals rely on Rule 62(e) and 28 U.S.C. § 2408 in excepting the United States from the bond requirement. 16A CHARLES ALAN WRIGHT, ARTHUR R. MILLER, ET AL., FEDERAL PRACTICE AND PROCEDURE § 3954.1 (4th ed. 2012)
- .

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – Asking the bankruptcy court to grant a stay pending appeal is almost always a waste of time—even though that is the long-standing practice. This step in the process should be permissive rather than mandatory. In addition, the rule should state that the appellate court's consideration of the stay motion should be *de novo* rather than a review of whether the bankruptcy court abused its discretion in denying the stay.

- The bankruptcy rule should remain consistent with the appellate rule in generally requiring a request for a stay first from the bankruptcy court. The Subcommittee concluded that the rule should not address the standard of review. Courts are divided on this issue under FRAP 8. *See* 16A CHARLES ALAN WRIGHT, ARTHUR R. MILLER, ET AL., FEDERAL PRACTICE AND PROCEDURE § 3954 (4th ed. 2012) ("In addressing the question of the stay, some courts of appeals will defer to the district court's determination and will reach a differing conclusion only if the district court has abused its discretion or if events subsequent to the district court's determination justify a different conclusion; other courts, however, eschew such deference.").

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Subdivision (b)(2)(B) should require a copy of any written ruling or order in the bankruptcy court to be included with the motion.

- The proposed rule follows FRAP 8(a)(2)(A).

Rule 8008

No changes are proposed.

Comments

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – Subdivision (c) should be made applicable to courts of appeals on direct appeal. While FRAP 12.1 deals with remands by the courts of appeal after notification of indicative rulings, it does not authorize remand to bankruptcy courts.

- The proposed FRAP 6(c), which was published last summer, makes FRAP 12.1 applicable to direct appeals and directs that "district court" be read as meaning "bankruptcy court" where appropriate. Thus, as the Committee Note explains, once the movant notifies the court of appeals under subdivision (b) that the bankruptcy court has made an indicative ruling, FRAP 6 and 12.1 take over and govern what happens in the court of appeals.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Rather than completely ducking the question when an appeal limits or defeats the bankruptcy court's authority to act while the appeal is pending, the Committee Note should at least note the point on which there seems to be a consensus—that a trial court retains plenary authority when an interlocutory order is appealed, at least until the appellate court grants leave to appeal.

- The Committee Note is modeled on the Committee Notes of the corresponding civil and appellate rules.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Subdivisions (a), (b), and (c) provide for actions, such as "state" and "notify," that may not be in writing and reflected on the docket. Since the movant is requesting relief, it should file a motion.

- This rule is modeled on Fed. R. Civ. P. 62.1 and FRAP 12.1, both of which use the terms "state" and "notify."

Rule 8009

Proposed changes:
(1) In subdivision (a)(2) and (3), add "with the bankruptcy clerk" after "may file" on lines 20-21 and 28.

The change is proposed in response to the following comment:

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Subdivision (a)(1)(A) provides that the appellant files its designation in the bankruptcy court, but subdivisions (a)(2) and (a)(3) do not specify the court where the appellee, cross-appellant, and cross-appellee file their designations.

(2) Add "the docket entries maintained by the bankruptcy clerk" as the first item in (a)(4).

The change is proposed in response to the following comment:
12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – "The docket entries maintained by the bankruptcy clerk" should be added as the first entry in the list of items to be included in the record on appeal. This is derived from FRAP 10(a)(3), although the certification requirement is deleted.

- Although current Rule 8006 does not require the docket sheet to be included in the record on appeal, it is included in FRAP 10 and might be helpful to appellate courts that do not access the record electronically.

Other comments

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – The practice of designating the record is fairly archaic. The 8th Cir. BAP has a rule that the record before the bankruptcy court is the record on appeal. The record does not have to be designated or copied. Instead the parties refer to the appropriate bankruptcy court docket numbers in their briefs, and BAP judges can review the entire bankruptcy court record. This rule should at the least accommodate that practice. Language similar to that included in Rule 8018(e) should be incorporated here. [Rule 8018(e) provides, "The district court or BAP may, either by rule for all cases or classes of cases or by order in a particular case, dispense with the appendix and permit an appeal to proceed on the original record, with the submission of any relevant parts of the record that the district court or BAP orders the parties to file."]

12-BK-015—Judge Barry S. Schermer (Bankr. E.D. Mo.) – The bankruptcy judges of the E.D. Mo. agree with Judge Kressel's comment about designation of the record.

12-BK-040—Bankruptcy Clerks Advisory Group – Agrees with Judge Kressel's and Judge Schermer's comments.

- The 8th Cir. BAP has adopted this procedure regarding the record on appeal even though current Rule 8006 requires parties to designate the record. The Subcommittee recommends that the Committee consider the issue in the near future.

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – Subdivision (b)(5) should make clear that the transcript referred to is the one described in (b)(1) and not a transcript that a party has created on its own and included in a brief or submitted as a separate document.

- This provision tracks the language of FRAP 10(b)(2). Both rules allow in some circumstances a statement of the evidence when a transcript is unavailable.

Subdivision (c) is troubling, at least without a definition of "unavailable." Many appellants will argue that a transcript is unavailable because they cannot afford to pay for it.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Same.

12-BK-040—Bankruptcy Clerks Advisory Group – The group agrees with Judge Kressel's comment. This rule will require the bankruptcy clerk to check for service, track the time for filing objections, as well as the settlement and approval of the statement. It also appears that the clerk will have to verify that the transcript is unavailable. If the provision is retained, it needs to be revised. The statement will have already been filed under subdivision (a)(1). The penultimate sentence of subdivision (c) should therefore be revised as follows: "~~The statement and a~~ Any objections or proposed amendments must ~~then~~ be ~~submitted~~ filed with ~~to the~~ bankruptcy court for settlement and approval."

- The provision follows very closely the language of FRAP 10(c), which does not define "unavailable." There is a substantial body of case law under the appellate rule holding that an appellant's inability to pay for a transcript does not make it unavailable within the meaning of the rule. *See, e.g.*, Thomas v. Computax Corp., 631 F.2d 131 (9th Cir. 1980). If the bankruptcy rule is modeled on the appellate rule, parties will be able to look to decisions interpreting it. Attempting to write a definition of "unavailable" will likely give rise to new issues. As for BCAG's proposed revision, the sentence in question in the published rule tracks the language of FRAP 10(c). Subdivision (a)(1) does not require the appellant to file the statement of the evidence, but just the designation of the statement as an item to be included in the record.

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – Subdivision (d)—Agreed Statement as the Record on Appeal—will cause havoc and irritate bankruptcy judges.

12-BK-015—Judge Barry S. Schermer (Bankr. E.D. Mo.) – The bankruptcy judges of the E.D. Mo. strongly oppose the addition of subdivision (d). It would cause much additional work for bankruptcy judges and their staff. The benefits to the parties and the appellate court are questionable.

12-BK-040—Bankruptcy Clerks Advisory Group – Agrees with Judge Schermer's comment.

- This provision is modeled on FRAP 10(d). While it is not likely to be used frequently, retaining the provision is consistent with the goal of making the Part VIII rules as similar as possible to the appellate rules.

12-BK-008—National Conference of Bankruptcy Judges – Subdivision (a)(5) includes the possibility of the bankruptcy clerk having to prepare paper copies of items for the record on appeal at a party's expense if the clerk requests them and the party does not comply. Although this provision is part of existing Rule 8006, it should be eliminated. The parties should bear the burden of producing them, not the clerk.

12-BK-040—Bankruptcy Clerks Advisory Group – Agrees with the NCBJ comment.

- The need for paper copies of documents is likely to become increasingly rare in the future. Subdivision (a)(5) is consistent with current Rule 8006.

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – In subdivision (a)(4), delete "from the record" from the last item, and authorize the bankruptcy court to order additional items added. As revised, the last item in (a)(4) would read, "any additional items that the bankruptcy court or the court where the appeal is pending orders."

- Eliminating "from the record" would allow the court to order any other item without limit to be included. Judge Teel says that, until an item is designated, it is not part of the record, but it is part of the record in the bankruptcy court prior to designation as part of the record on appeal. Subdivision (e)(2) allows the bankruptcy court to supplement the record if anything material to either party is omitted or misstated.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Subdivision (e)(1) authorizes a party to move to strike an item that has been improperly designated as part of the record on appeal. The FRAP provision on which this rule is modeled, FRAP 10(e), does not contain a similar sentence. Improper designation goes beyond whether the record accurately reflects what occurred in the bankruptcy court. It goes to the form and content of the record, which are governed by (e)(3) and are resolved by the appellate court. The sentence about moving to strike should therefore be moved from subdivision (e)(1) to (e)(3).

- If the provision in question is left where it is in subdivision (e)(1), it will likely be interpreted to be consistent in scope with the remainder of the paragraph—as providing a procedure for challenging designated items that do not accurately disclose what occurred in the bankruptcy court.

12-BK-040—Bankruptcy Clerks Advisory Group – In subdivisions (b)(1), (b)(2), and (b)(3), if an appellant is not ordering a transcript, it must file with the bankruptcy clerk a certificate stating that fact. Since orders for transcripts must be filed with the clerk, as well as the reporter's receipt of a transcript order, the filing of a certificate of no transcript seems unnecessary. The certificate requirement also suggests the need for a special form.

- These provisions are modeled on FRAP 10(b). The certificate requirement is imposed as a timing trigger. The appellee or cross-appellant must order any part of the transcript it wants within 14 days after the appellant files its order or certificate. If a form for the certificate is needed, a local form can be adopted.

Subdivision (f) addresses sealed documents. Currently sealed documents remain under seal during the appeal. The rule suggests that, if a party does not file a motion with the appellate court to accept the document under seal, the document may be unsealed. The more protective approach would be to keep the document sealed unless requested otherwise.

- Under the provision, a sealed document remains under seal in the bankruptcy court and is not transmitted as part of the record unless the appellate court grants a

motion to accept the document under seal. The Committee Note explains that the "motion must be granted before the bankruptcy clerk may transmit the sealed document to the district, BAP, or circuit clerk."

BK-034—Oregon State Bar Debtor-Creditor Section Local Rules and Forms Committee – Proposed subdivision (a) provides stylistic changes that will assist practitioners in completing the record on appeal with greater ease.

Rule 8010

Proposed changes:
(1) In subdivision (a)(1), change "the person or service that the bankruptcy court designates" to "the person or service selected in accordance with bankruptcy court procedures."

The change is proposed in response to the following comments:

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – In subdivision (a)(1), "bankruptcy court" should be changed to "bankruptcy clerk" because the clerk is the person who designates the person or service that transcribes the recording of a court proceeding. Worded as it is, the provision might lead to appellants bothering the court with motions to designate a court reporter or transcription service.

12-BK-040—Bankruptcy Clerks Advisory Group – Regarding subdivision (a)(1), bankruptcy clerks do not designate a single transcription service. Instead, in order to avoid favoritism, they provide a list of transcription services.

(2) In subdivision (a)(2)(A), add "in accordance with Rule 8009(b)" on line 11 following "order for a transcript."

The change is proposed in response to the following comment:

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Regarding subdivision (a)(2)(A): Add a cross-reference to Rule 8009(b) so that the sentence begins, "Upon receiving an order for a transcript in accordance with Rule 8009(b) . . . ." This addition would emphasize the need for making satisfactory arrangements for paying the court reporter. Nonpayment is a common cause of delays of bankruptcy appeals.

Other comments

12-BK-008—National Conference of Bankruptcy Judges – Subdivision (b)(1) directs the bankruptcy clerk to transmit the record when it is complete. In some cases the record is never complete because the parties fail to designate what the record should contain. The provision should be revised to fix an outside deadline for the clerk's transmission of the record. Once the

deadline passes, the clerk would transmit whatever items in the list in proposed Rule 8009(a)(4) the clerk has.

BK-034—Oregon State Bar Debtor-Creditor Section Local Rules and Forms Committee – Subdivision (b) does not specify the clerk's duties if the record is never completed.

12-BK-040—Bankruptcy Clerks Advisory Group – Endorses the NCBJ comment on this issue.

- The Subcommittee recommends that this issue be listed for future Committee consideration.

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – In some cases when the appellate court orders paper copies of the record to be delivered, it may be appropriate for the appellee to provide them. Add to the end of the first sentence of subdivision (b)(4), "or the appellee where appropriate."

The Subcommittee recommends that this comment be considered in the future along with the immediately preceding comments.

12-BK-008—National Conference of Bankruptcy Judges – Subdivision (b)(4) should be eliminated for the reasons stated regarding Rule 8009(a)(5).

12-BK-040—Bankruptcy Clerks Advisory Group – The group endorses the NCBJ comment on this issue.

- See the discussion of the NCBJ's comments about Rule 8009(a)(5).

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – The requirement that a reporter file an acknowledgment of the order for a transcript may be more difficult for a reporter in the bankruptcy court than in the district court. In the bankruptcy court the reporter is unlikely to have a close relationship and familiarity with the court, and the duty imposed under this provision is more onerous than the requirement of FRAP 11(b)(1)(A) ("enter at the foot of the order the date of the receipt and the expected completion date and send a copy, so endorsed, to the Cir. court"). Also limit the reporter's duty under subdivision (a)(2)(A) to requests for transcripts that are designated for purposes of an appeal.

- The intent was not to impose a duty substantially different from the requirement of FRAP 11(b)(1)(A). The proposed rule is worded slightly differently from the appellate rule in order to avoid paper-based terminology. Given the context of the provision, the Subcommittee doubts that there will be confusion about this rule applying outside of the appeal context.

The requirements of subdivision (a)(2)(C)–(D) (reporter must seek extension of time, clerk must report tardiness) will be ineffectual. The bankruptcy judge has no tools and few incentives to do anything but shrug.

- Some reporters will comply, so the rule is likely to have an impact. Perhaps the ultimate tool will be the striking of the offending reporter or service from the list of transcribers that the clerk provides to parties.

Consider authorizing a sanction of dismissal of an appeal if the appellant is delinquent in performing any of its duties regarding completion of the record.

- Rule 8003(a)(2) provides this authority. ("An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the district court or BAP to act as it considers appropriate, including dismissing the appeal.")

12-BK-040—Bankruptcy Clerks Advisory Group – Subdivision (a)(2) does not make clear how a reporter will be able to estimate when the transcript will be completed or how the reporter requests an extension of time from the bankruptcy clerk.

- The Subcommittee did not see this as a problem. It also concluded that the procedure for requesting an extension of time from the clerk can be left to local practices.

As stated regarding Rule 8009, the appellate court should be permitted to deem the record of proceedings in the bankruptcy court as the record on appeal. Then there would be no need for the bankruptcy clerk to transmit the record.

- See discussion of this issue under Rule 8009.

Rule 8011

No changes are proposed.

Comments

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – The rule allowing briefs and appendices to be timely filed if mailed by the deadline has always been a bad rule. Why shouldn't the filing rules be the same for these documents as for all others?

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – Subdivision (a)(2) should not follow the ill-advised rule of FRAP 25(a)(2)(B) of having different filing rules for briefs and appendices.

- The Subcommittee recommends that this issue be listed for future Committee consideration.

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – Subdivision (a)(2)(C) requires that a notarized statement state that first-class postage has been prepaid, but the rule does not require that the postage be paid.

- The wording of the proposed rule mirrors FRAP 25(a)(2)(C).

Subdivision (b) refers to service by the clerk. The rules should not require service by the clerk.

- The Subcommittee is recommending retaining the provision of proposed Rule 8003 that requires the clerk to serve the notice of appeal.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Subdivision (a)(3), which is similar to Rule 5005(a)(1), should incorporate a provision similar to Rule 5005(c).

- Rule 5005(c) provides, among other things, that "[i]n the interest of justice, the court may order that a paper erroneously delivered [for example, to a district judge or a district clerk] shall be deemed filed with the [bankruptcy] clerk as of the date of its original delivery." Rule 8010(a)(3) is identical to FRAP 25(a)(4) and does not have a similar provision. Rule 8002(a)(4), however, provides that a notice of appeal that is mistakenly filed in a district court, BAP, or court of appeals will be considered filed in the bankruptcy court on the date on which it was received by the incorrect court.

The Committee Note's discussion of the signature requirement of subdivision (e) should refer to Rule 9011, unless Rule 9011 is to be qualified. In that case, there is a need for clarification.

- A reference to Rule 9011 in the Committee Note would require a determination that Rule 9011 applies to bankruptcy appeals in district courts and BAPs. *Compare In re Sokolik*, 635 F. 3d 261, 269-271 (7th Cir. 2011) (affirming (1) district court's denial of Rule 9011 sanctions against appellee due to failure to satisfy safe-harbor requirement and (2) award of sanctions against appellant under Rule 8020 in bankruptcy appeal), *with* 10 COLLIER ON BANKRUPTCY ¶ 8020.05 (16th ed. 2012) ("Bankruptcy Rule 8020 governs sanctions imposed by the district court or bankruptcy appellate panel for frivolous appeals, while Bankruptcy Rule 9011 sometimes applies to frivolous actions filed in the bankruptcy court.").

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Revise subdivision (a)(2)(D) to read, "Unless the BAP or district court orders otherwise, no paper copy is required."

- The suggested wording is simpler and more succinct than the proposed provision. However, it fails to convey the intended meaning that, when documents in paper form are filed by mail or delivery, generally no *additional* copies are required.

Rule 8012

Proposed change:
At the end of the first paragraph of the Committee Note, add an explanation that the broad definition of "corporation" in § 101(9) of the Code applies to this rule.

The change is proposed in response to the following comment:

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – It may be worth explaining in the Committee Note that a "corporate party" includes limited liability partnerships, limited liability companies, and other entities that are included within the definition of "corporation" in § 101(9) of the Bankruptcy Code.

- Under Rule 9001, the definitions in § 101 govern the use of the terms in the Bankruptcy Rules. Because lawyers handling bankruptcy appeals will not always be well versed in Bankruptcy Code definitions, a reminder in the Committee Note of the broad definition of "corporation" may be useful.

Rule 8013

Proposed changes:
(1) Add "Unless the court orders otherwise," to the beginning of subdivision (a)(D)(ii) and (iii) on lines 33-36.

The change is proposed in response to the following comments:

12-BK-008—National Conference of Bankruptcy Judges – Subdivision (a)(2)(D)(ii) provides that a notice of motion is not required. This provision is contrary to the motion practice in some district courts, such as the Northern District of Illinois, which require a notice of motion for all motions. The provision should either be deleted or modified to add "unless required by local rule."

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – Modify subdivision (a)(2)(D)(iii) by adding at the end of the provision, "unless required by local rule or order of the court in which the appeal is pending." A district court or BAP should have discretion to require a proposed order.

- District courts in their capacity as trial courts already have well established motion practices. The desire for uniformity and consistency with the appellate rules is not sufficiently strong to require disruption of those practices with respect to notices of motion and proposed orders.

(2) In subdivision (d)(2)(B), change "reconsider" to "consider" on line 67.

The change is proposed in response to the following comments:

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – Modify subdivision (d)(2)(B) to read: "state whether the request was pursued via a motion to the bankruptcy court, and, if it was, state whether all grounds for it were submitted to the bankruptcy court, and, if they were not, state why the motion should not be remanded for the bankruptcy court to reconsider." Sometimes it would not be appropriate to file a motion relating to an appeal in the bankruptcy court. Make a conforming change to the Committee Note.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Subdivision (d)(2)(B) refers to remanding a motion for the bankruptcy court to reconsider. "Consider" should be substituted for "reconsider" since the bankruptcy court may not have previously considered the emergency motion. The description of what is meant by "remand" should be more precise.

EG: A conforming amendment needs to be made, but has not been, to the Committee Note.

Other comments

12-BK-008—National Conference of Bankruptcy Judges – Subdivision (f)(3)(A) provides that a motion may not exceed 20 pages. Some districts have local rules with more restrictive requirements. The provision should therefore be prefaced with "Unless otherwise provided by local rule."

- Proposed subdivision (f)(3) begins by stating, "Unless the district court or BAP orders otherwise." That language has been interpreted in other rules to permit a court to "order otherwise" by means of a local rule.

Subdivision (g), which allows intervention in an appeal, should be deleted. It does not have a counterpart in the general appellate rules, although some circuits have recognized an inherent power to permit intervention. It is not clear why a special bankruptcy appellate intervention rule is needed or who would have standing to participate on appeal if they had not participated in proceedings in the bankruptcy court.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – It is unclear why subdivision (g) is necessary or whether a party moving to intervene would have standing.

- This rule may be useful for some bankruptcy appeals. It is not always clear who is a party to a contested matter, so someone affected by an order being appealed may seek to intervene to participate in the appeal. Likewise, a United States trustee may need this authority to participate in some appeals.

12-BK-010—The States' Association of Bankruptcy Attorneys – In subdivision (a)(1), for clarity add "where the case is pending" after "district or BAP clerk."

- The Subcommittee concluded that the rule is sufficiently clear.

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – Subdivision (b) refers to a motion to reconsider. As previously noted, Rule 8002(b)(1) should include these motions in the list of tolling motions.

- The Subcommittee is recommending that motions to reconsider not be added to Rule 8002(b)(1). The reference here is consistent with FRAP 27(b).

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – In subdivision (a)(1), add "to the district court or the BAP" after "A request." This change will make the provision clearer since sometimes a motion relating to an appeal will be filed in the bankruptcy court.

- The Subcommittee concluded that the additional language is not needed.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Subdivision (d) appears to require irreparable harm to support an emergency motion. There could be situations, however, such as expediting an appeal, that may warrant emergency consideration even though irreparable harm will not ensue.

- Proposed subdivision (d) carries forward the provisions of current Rule 8011(d). Like the proposed rule, the current rule requires irreparable harm for an emergency motion.

Rule 8014

No changes are proposed.

Comments

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – In subdivision (a)(4)(B), insert "appellate" before "jurisdiction."

- This change is not needed because the context makes clear that the reference is to appellate jurisdiction.

In subdivision (a)(4)(D), consider requiring an assertion that leave to appeal has been granted in the case of an interlocutory appeal under § 158(a)(3).

- The proposed provision tracks the language of FRAP 28(a)(4)(D). Interlocutory appeals are covered by "or information establishing the district court's or BAP's jurisdiction on another basis."

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Subdivision (f), which governs supplemental authorities, requires a party to inform the court by way of a "signed submission." Proceeding by a motion would be preferable.

- FRAP 28(j), on which this provision is based, requires notification of the clerk by letter. To avoid paper-based terminology, the proposed provision uses the term "submission." There does not appear to be any reason to depart from the FRAP practice by requiring a motion.

Rule 8015

Proposed changes:
(1) In subdivision (f), delete "or order in a particular case" following "local rule" in line 122, and make a conforming change to the Committee Note.

(2) Add language to the penultimate paragraph of the Committee Note to clarify the distinction between Rule 8011(a)(3) and subdivision (f) of this rule.

The changes are proposed in response to the following comment:

<u>12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.)</u> – Subdivision (f) seems inconsistent with Rule 8011(a)(3). Perhaps it would be more accurate to provide that nonconforming documents must be accepted for filing (Rule 8011(a)(3)), but that a court may order a document not conforming to the requirements of Rule 8015 to be stricken if prompt corrective action is not taken.

- Rule 8011(a)(3) applies to clerks, and subdivision (f) of this rule addresses the court's authority. The Committee Note should clarify this distinction. There is no need for this rule to provide for local variation by order in a particular case because Rule 8028 allows suspension of the requirements of Rule 8015 in a particular case.

(3) Revise the Committee Note's discussion of subdivision (a)(7) to clarify that using the type-volume limitations for brief lengths will permit briefs that exceed the number of pages specified in the rule.

The change is proposed in response to the following comment:

<u>12-BK-010—The States' Association of Bankruptcy Attorneys</u> – The Committee Note incorrectly suggests that the page limits of proposed subdivision (a)(7) will be shorter than the existing page limits provided by current Rule 8010(c). Although the page limitation of proposed subdivision (a)(7)(A) reduces the number of pages from 50 to 30, the Committee Note to FRAP 32 indicates that the type-volume limitation that is adopted by subdivision (a)(7)(B) is expected to approximate 50 pages. The 30-page limit is merely a safe harbor. The Committee Note to Rule 8015 should make clear that no significant reduction in brief length is being imposed.

- This comment is well taken. The Committee Note to the 1998 amendment of FRAP 32 states: "The limits in subparagraph (B) approximate the current 50-page limit . . . ."

Other comments

12-BK-008—National Conference of Bankruptcy Judges – Subdivision (a)(7)(C) refers to an Official Form that does not exist.

12-BK-040—Bankruptcy Clerks Advisory Group – Same.

- As is discussed under agenda item 9(B), a new Official Bankruptcy Form based on Appellate Form 6 is being recommended for publication.

12-BK-040—Bankruptcy Clerks Advisory Group (continued) – Subdivision (c) refers to "Paper Copies of Appendices." It should be revised to "Paper Filed Appendices" or "Appendices Filed in Paper." The first sentence should begin, "An appendix filed in paper . . . ." Similarly subdivision (e)(2) should be revised to refer to "Other Documents Filed in Paper" and should begin, "Any other document filed in paper . . . ."

- The Subcommittee recommends that no change in wording be made.

BK-034—Oregon State Bar Debtor-Creditor Section Local Rules and Forms Committee – We support the proposed reduction of brief page length, as this will bring greater consistency with the FRAP and Oregon Local Bankruptcy Rules.

Rule 8016

Proposed changes:
(1) Add subdivision (d)(2)(D) that parallels Rule 8015(a)(7)(B)(iii).

The change is not proposed in response to a comment. Instead, the drafting of proposed Official Form 17C revealed the need for a provision in this rule about parts of the brief that do not count in calculating word and line limitations.

(2) Delete subdivision (f), and make a conforming change to the Committee Note.

The change is made in response to the following comments:

12-BK-008—National Conference of Bankruptcy Judges – Subdivision (f) addresses the consequences of an appellant's or an appellee's failure to file a brief on time. This provision is misplaced because it applies to all appeals, not just to cross-appeals. Moreover, another provision —Rule 8018(a)(4)—addresses the same subject, but differs in scope. A single rule addressing the issue would be better.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – It is unclear why subdivision (f) is tucked in here. It also appears to duplicate Rule 8018(a)(4).

- FRAP 28.1, on which Rule 8016 is based, does not contain this provision. The subject is better addressed only in Rule 8018(a)(4), which parallels FRAP 31(c). If that change is made, Rule 8016(a) should be changed to make Rule 8018(a)(1)-(3) inapplicable, rather than all of Rule 8018(a), and (b) should be changed to include Rule 8018(a)(4) as well as Rules 8018(b) and 8019.

EG: The changes to Rule 8018(a) and (b) noted in the preceding response need to be made, but have not been.

Other comments

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – In subdivision (f) the authorization for dismissal of an appeal or cross-appeal should require notice and an opportunity to show cause why dismissal ought not be ordered. This issue is more logically addressed in Rule 8018.

- This suggestion will be considered in connection with Rule 8018(a)(4).

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Subdivision (d) addresses length and type-volume limitations similar to those in Rule 8015. A counterpart to Rule 8015(f) should be incorporated.

- Rules 8015 and 8016 follow the organization of FRAP 32 and 28.1. The provision the comment refers to—Local Variation—is included only in FRAP 32 and not in FRAP 28.1.

Rule 8017

No changes are proposed.

Comments

12-BK-010—The States' Association of Bankruptcy Attorneys – All governmental units should be permitted to file an amicus brief without consent or leave of court.

- This is an issue that the Appellate Rules Committee has been considering. The bankruptcy appellate rules should not expand the rule unless FRAP 29 is expanded.

Proposed Rule 8007(d), which eliminates the bond requirement for the United States, its officer, or agency, also applies to an appeal taken "by direction of any department of the federal government." Why aren't all provisions referring to governmental units similarly worded?

- The wording of Rule 8007(d) is taken from current Rule 8005 and Civil Rule 62(e). The language is derived from a federal statute. Rule 8017(a) follows the wording of FRAP 29.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – With respect to subdivision (g), we prefer the presumption of no oral argument by an amicus curiae. Revise the provision to read, "Unless the BAP or district court orders otherwise, an amicus curiae may not participate in oral argument."

- The proposed rule as written does not create a presumption in favor of oral argument. It provides, in language identical to FRAP 29(g), that an amicus curiae may participate in oral argument only with the court's permission.

Rule 8018

Proposed change:

In subdivision (a)(4), change "the appeal may be dismissed" to "an appellee may move to dismiss the appeal or the appellate court, after notice, may dismiss the appeal on its own motion."

The change is proposed in response to the following comment to Rule 8016:

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – In Rule 8016(f), the authorization for dismissal of an appeal or cross-appeal should require notice and an opportunity to show cause why dismissal ought not be ordered. This issue is more logically addressed in Rule 8018.

- FRAP 31(c) provides that "an appellee may move to dismiss the appeal" if the appellant fails to file a brief on time. That language is preferable to the language in the published rule because it does not suggest that an appeal can be dismissed without notice to the appellant. The addition of that language, however, should not suggest that the appellate court cannot dismiss appeals *sua sponte* for failure to prosecute, so long as notice is given.

EG: The wording of the proposed change should be revised slightly. "the district court or BAP" should be substituted for "the appellate court."

Other comments

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – Subdivision (e) allows the appellate court to dispense with the appendix and permit an appeal to proceed on the original record. Similar language should be included in Rule 8009.

- See discussion of Judge Kressel's and Judge Schermer's comments regarding Rule 8009.

12-BK-008—National Conference of Bankruptcy Judges – Subdivision (a)(4) is partly redundant of Rule 8016(f).

12-BK-026—Judge S. Martin Teel, Jr. (Bankr. D.D.C.) – If Rule 8016(f) is retained, a new subdivision (f) should be added to this rule that provides a cross-reference to the earlier provision. It might read as follows: "(f) FAILURE TO FILE ON TIME. Rule 8016(f) addresses the failure of an appellant (or of an appellee on a cross-appeal) timely to file a principal brief."

- The Subcommittee recommends addressing these comments by deleting Rule 8016(f).

Rule 8019

No changes are proposed.

Comments

12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.) – There should not be a presumption in favor of oral argument. Furthermore, the grounds for not allowing it should not be limited. It is sometimes not granted for other reasons, such as the need for an expedited decision or issues of cost.

- Subdivision (b) carries over the provisions of current Rule 8012 and is consistent with FRAP 34(a)(2).

12-BK-014—Judge Dennis Montali (Bankr. N.D. Cal.) – There is an inconsistency between subdivisions (b) and (g). Subdivision (b) requires unanimity among the panel of BAP judges to dispense with oral argument, yet subdivision (g) says that the BAP may direct a case to be argued even though the parties agreed to submit it on the briefs. A simple majority of the judges should be sufficient in either situation.

- The unanimity requirement of subdivision (b) is consistent with current Rule 8012 and FRAP 34(a)(2). Subdivision (g) is consistent with FRAP 34(f).

12-BK-027—William McNeil – The Committee Note regarding subdivision (f) is inconsistent with the rule. The note states that if the appellee does not appear, the court is authorized to postpone oral argument. Subdivision (f), however, authorizes postponement only if both parties fail to appear. An appellant who appear for oral argument should not be forced to reappear at a postponed argument just because the other party failed to appear.

- The comment is incorrect. The Committee Note points out the difference between Rule 8019(f) and FRAP 34(e). The latter rule provides that if the appellee fails to appear, "the court must hear appellant's argument," whereas the proposed bankruptcy rule provides, "the district court or BAP may hear the appellant's argument." Because the rule is permissive, it gives the court another option—postponement of the argument.

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – It would be useful for the Committee Note to explain with regard to subdivision (f) that “orders otherwise” includes dismissal of the appeal for lack of prosecution.

- Since the Committee Note does not address other actions that the court may take, it should not mention this one action in particular.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – Subdivision (d) regarding order and contents of argument is unnecessary.

- This provision adopts FRAP 34(c).

Subdivision (g) does not provide the means by which the parties inform the court of their agreement to submit the case for decision on the briefs.

- The provision tracks the language of FRAP 34(f). If a procedure is needed, it can be prescribed by local rule.

Rule 8020

No changes are proposed.

Comment

12-BK-033—Judge Christopher M. Klein (Bankr. E.D. Cal.) – Subdivision (b) provides sanctioning authority for the “failure to comply with any court order.” It would be better to add “or local rule” after “order.” The Committee Note states that failure to comply with a court order may include a failure to comply with a local court rule, but people do not always read Committee Notes, and some courts do not consider them authoritative.

- Several years ago Judge Rosenthal brought to the Committee’s attention case law holding that a local rule satisfies a statutory or rule provision requiring a court order for a departure from a general rule (for example, a statute that says, “unless the court orders otherwise”). As a result, the Committee has since taken the position that a rule’s reference to “order” includes local rules. While Judge Klein may be correct that this point is too subtle for many readers to pick up on, an inclusion of “or local rule” here may suggest that local rules are not intended to be included in other rules where they are not specifically mentioned.

Rule 8021

No changes are proposed.

Comment

12-BK-010—The States' Association of Bankruptcy Attorneys – Subdivision (b) should be expanded to apply to all governmental units, not just to the United States and its agencies and officers.

- The provision is consistent with FRAP 39(b). The Subcommittee is not recommending adoption of this suggestion regarding other Part VIII rules.

Rule 8022

No changes are proposed.

Comments

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – It would give the courts more flexibility to state in subdivision (a)(2) that there is no oral argument on a motion for rehearing unless the court orders otherwise. An absolute prohibition seems unnecessary.

- The language of the proposed rule is identical to FRAP 40(a)(2). Current Rule 8015 does not address the availability of oral argument.

12-BK-040—Bankruptcy Clerks Advisory Group – Subdivision (b) states, "Copies must be served and filed as provided by Rule 8011." Because parties do not file copies, the provision should state, "The motion must be served and filed . . . ."

- The language of the proposed rule tracks FRAP 40(b).

Rule 8023

No changes are proposed.

Comments

12-BK-008—National Conference of Bankruptcy Judges – The proposed rule is consistent with current practice under Rule 8001(c), and the NCBJ supports its adoption. The rule, however, presents two issues that the Committee should consider in the near future. (1) It does not account for the possibility that an appeal may concern an objection to discharge under § 727(a). In the bankruptcy court, Rule 7041 provides that a plaintiff may not dismiss this type of action without giving notice and obtaining a court order containing appropriate terms and conditions. Consideration should be given to including similar safeguards in this rule. (2) The rule also does not take into account that a bankruptcy trustee may be a party to an appeal that is voluntarily dismissed. Under Rule 9019 the trustee is required to obtain court approval of any compromise. The rule does not make clear how it relates to Rule 9019.

- The Subcommittee recommends that these issues be listed for future Committee consideration.

12-BK-036—Mary P. Sharon, Clerk (1st Cir. BAP) – The rule provides that the appellate court must dismiss if the parties file an agreement. Since they are requesting relief, according to Rule 8013(a) they should have to file a motion.

- Both current Rule 8001(c)(2) and FRAP 42(b) require the filing of an agreement, not a motion.

Rule 8024

Proposed change:
In subdivision (c), change references to "original documents" to "physical items," and make conforming changes to the Committee Note.

The change is proposed in response to the following comment:

12-BK-040—Bankruptcy Clerks Advisory Group – Subdivision (c) refers to returning "original" documents. The bankruptcy clerk would not be transmitting original documents as the record on appeal. It therefore would be better to refer to "any paper documents."

- Current Rule 8016(b) refers to the return of "original papers" transmitted as the record on appeal. FRAP 45(d) also refers to the return of "original papers" constituting the record on appeal. FRAP 10(a)(1) provides that "the original papers and exhibits filed in the district court," along with any transcript of proceedings and a certified copy of docket entries, constitute the record on appeal. The reference in FRAP 45(d) to "original documents" therefore appears not to be drawing a distinction between originals and copies, but instead is requiring that the trial documents comprising the record on appeal be returned to the district court. The term "original documents" in proposed Rule 8024(c) could cause confusion. The term "physical items" would cover documents and any exhibits that are physically, rather than electronically, sent to the appellate court.

Other comment

12-BK-008—National Conference of Bankruptcy Judges – The proposed rule carries forward a problem in current rule 8016. It fails to address when jurisdiction revests in the bankruptcy court after an appeal. The Federal Rules of Appellate Procedure resolve this problem for appeals from the district court to the court of appeals by providing for the issuance of a mandate by the appellate court. Until the mandate is issued, the district court generally lacks authority to take any action with respect to the matters involved in the appeal. Proposed Rule 8024 lacks any comparable provision, even though it provides for the appellate clerk's transmission of notice of entry of judgment, with a copy of any opinion, to the parties, the U.S. trustee, and the bankruptcy

clerk. The rule should adopt a mandate requirement with time limits for the issuance of the mandate and a provision for when it becomes effective. Because the problem exists with the current rule and does not seem to be disrupting bankruptcy administration unduly, promulgation of this rule should not be delayed. But the Committee should consider the issue in the near future.

- The Subcommittee recommends that this issue listed for future Committee consideration. *See Payne v. Clarendon Nat'l Ins. Co. (In re Sunset Sales, Inc.)*, 195 F.3d 568 (10th Cir. 1999) (noting that the "Bankruptcy Rules do not specifically address the issuance of the BAP's mandate. Therefore, the subject is governed by local rule.").

Rules 8026, 8027, and 8028

No comments were submitted on these proposed rules, and no changes are proposed.

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FEDERAL RULES OF BANKRUPTCY PROCEDURE

PART VIII. BANKRUPTCY APPEALS

Rule

8001. Scope of Part VIII Rules; Definition of "BAP"; Method of Transmission

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8005. Election to Have an Appeal Heard by the District Court Instead of the BAP

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8010. Completing and Transmitting the Record

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8014. Briefs

8015. Form and Length of Briefs; Form of Appendices and Other Papers

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8018. Serving and Filing Briefs; Appendices

8019. Oral Argument

8020. Frivolous Appeal and Other Misconduct

8021. Costs

8022. Motion for Rehearing

8023. Voluntary Dismissal

8024. Clerk's Duties on Disposition of the Appeal

8025. Stay of a District Court or BAP Judgment

8026. Rules by Circuit Councils and District Courts; Procedure When There is No Controlling Law

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8028. Suspension of Rules in Part VIII

Rule 8001. Scope of Part VIII Rules; Definition of "BAP"; Method of Transmission

1 (a) GENERAL SCOPE. These Part VIII rules govern the
2 procedure in a United States district court and a bankruptcy
3 appellate panel on appeal from a judgment, order, or decree of a
4 bankruptcy court. They also govern certain procedures on appeal
5 to a United States court of appeals under 28 U.S.C. § 158(d).
6 (b) DEFINITION OF "BAP." "BAP" means a bankruptcy
7 appellate panel established by a circuit's judicial council and
8 authorized to hear appeals from a bankruptcy court under 28
9 U.S.C. § 158.
10 (c) METHOD OF TRANSMITTING DOCUMENTS. A
11 document must be sent electronically under these Part VIII rules,
12 unless it is being sent by or to an individual who is not represented
13 by counsel or the court's governing rules permit or require mailing
14 or other means of delivery.

COMMITTEE NOTE

These Part VIII rules apply to appeals under 28 U.S.C. § 158(a) from bankruptcy courts to district courts and BAPs. The Federal Rules of Appellate Procedure generally govern bankruptcy appeals to courts of appeals.

Eight of the Part VIII rules do, however, relate to appeals to courts of appeals. Rule 8004(e) provides that the authorization by a court of appeals of a direct appeal of a bankruptcy court's interlocutory order or decree constitutes a grant of leave to appeal. Rule 8006 governs the procedure for certification under 28 U.S.C. § 158(d)(2) of a direct appeal

from a judgment, order, or decree of a bankruptcy court to a court of appeals. Rule 8007 addresses stays pending a direct appeal to a court of appeals. Rule 8008 authorizes a bankruptcy court to issue an indicative ruling while an appeal is pending in a court of appeals. Rules 8009 and 8010 govern the record on appeal in a direct appeal to a court of appeals. Rule 8025 governs the granting of a stay of a district court or BAP judgment pending an appeal to the court of appeals. And Rule 8028 authorizes the court of appeals to suspend applicable Part VIII rules in a particular case, subject to certain enumerated exceptions.

These rules take account of the evolving technology in the federal courts for the electronic filing, storage, and transmission of documents. Except as applied to pro se parties, the Part VIII rules require documents to be sent electronically, unless applicable court rules or orders expressly require or permit another means of sending a particular document.

Rule 8002. Time for Filing Notice of Appeal

1 (a) IN GENERAL.

2 (1) *Fourteen-Day Period*. Except as provided in
3 subdivisions (b) and (c), a notice of appeal must be filed
4 with the bankruptcy clerk within 14 days after entry of the
5 judgment, order, or decree being appealed.

6 (2) *Filing Before the Entry of Judgment*. A notice
7 of appeal filed after the bankruptcy court announces a
8 decision or order—but before entry of the judgment, order,
9 or decree—is treated as filed on the date of and after the
10 entry.

11 (3) *Multiple Appeals*. If one party files a timely
12 notice of appeal, any other party may file a notice of appeal
13 within 14 days after the date when the first notice was filed,
14 or within the time otherwise allowed by this rule,
15 whichever period ends later.

16 (4) *Mistaken Filing in Another Court*. If a notice
17 of appeal is mistakenly filed in a district court, BAP, or
18 court of appeals, the clerk of that court must state on the
19 notice the date on which it was received and transmit it to
20 the bankruptcy clerk. The notice of appeal is then

21 considered filed in the bankruptcy court on the date so
22 stated.
23 (b) EFFECT OF A MOTION ON THE TIME TO
24 APPEAL.
25 (1) *In General*. If a party timely files in the
26 bankruptcy court any of the following motions, the time to
27 file an appeal runs for all parties from the entry of the order
28 disposing of the last such remaining motion:
29 (A) to amend or make additional findings
30 under Rule 7052, whether or not granting the
31 motion would alter the judgment;
32 (B) to alter or amend the judgment under
33 Rule 9023;
34 (C) for a new trial under Rule 9023; or
35 (D) for relief under Rule 9024 if the motion
36 is filed within 14 days after the judgment is entered.
37 (2) *Filing an Appeal Before the Motion is Decided*.
38 If a party files a notice of appeal after the court announces
39 or enters a judgment, order, or decree—but before it
40 disposes of any motion listed in subdivision (b)(1)—the
41 notice becomes effective when the order disposing of the
42 last such remaining motion is entered.

43 (3) *Appealing the Motion*. If a party intends to
44 challenge an order disposing of any motion listed in
45 subdivision (b)(1)—or the alteration or amendment of a
46 judgment, order, or decree upon the motion—the party
47 must file a notice of appeal or an amended notice of appeal.
48 The notice or amended notice must comply with Rule 8003
49 or 8004 and be filed within the time prescribed by this rule,
50 measured from the entry of the order disposing of the last
51 such remaining motion.
52 (4) *No Additional Fee*. No additional fee is
53 required to file an amended notice of appeal.
54 (c) APPEAL BY AN INMATE CONFINED IN AN
55 INSTITUTION.
56 (1) *In General*. If an inmate confined in an
57 institution files a notice of appeal from a judgment, order,
58 or decree of a bankruptcy court ~~to a district court or BAP~~,
59 the notice is timely if it is deposited in the institution's
60 internal mail system on or before the last day for filing. If
61 the institution has a system designed for legal mail, the
62 inmate must use that system to receive the benefit of this
63 rule. Timely filing may be shown by a declaration in
64 compliance with 28 U.S.C. § 1746 or by a notarized

65 statement, either of which must set forth the date of deposit
66 and state that first-class postage has been prepaid.
67 (2) *Multiple Appeals*. If an inmate files under this
68 subdivision the first notice of appeal, the 14-day period
69 provided in subdivision (a)(3) for another party to file a
70 notice of appeal runs from the date when the bankruptcy
71 clerk dockets the first notice.
72 (d) EXTENDING THE TIME TO APPEAL.
73 (1) *When the Time May be Extended*. Except as
74 provided in subdivision (d)(2), the bankruptcy court may
75 extend the time to file a notice of appeal upon a party's
76 motion that is filed:
77 (A) within the time prescribed by this rule;
78 or
79 (B) within 21 days after that time, if the
80 party shows excusable neglect.
81 (2) *When the Time May Not be Extended*. The
82 bankruptcy court may not extend the time to file a notice of
83 appeal if the judgment, order, or decree appealed from:
84 (A) grants relief from an automatic stay
85 under § 362, 922, 1201, or 1301 of the Code;
86 (B) authorizes the sale or lease of property

87 or the use of cash collateral under § 363 of the

88 Code;

89 (C) authorizes the obtaining of credit under

90 § 364 of the Code;

91 (D) authorizes the assumption or

92 assignment of an executory contract or unexpired

93 lease under § 365 of the Code;

94 (E) approves a disclosure statement under

95 § 1125 of the Code; or

96 (F) confirms a plan under § 943, 1129,

97 1225, or 1325 of the Code.

98 (3) *Time Limits on an Extension*. No extension of

99 time may exceed 21 days after the time prescribed by this

100 rule, or 14 days after the order granting the motion to

101 extend time is entered, whichever is later.

COMMITTEE NOTE

This rule is derived from former Rule 8002 and F.R.App.P. 4(a) and (c). With the exception of subdivision (c), the changes to the former rule are stylistic. The rule retains the former rule's 14-day time period for filing a notice of appeal, as opposed to the longer periods permitted for appeals in civil cases under F.R.App.P. 4(a).

Subdivision (a) continues to allow any other party to file a notice of appeal within 14 days after the first notice of appeal is filed, or thereafter to the extent otherwise authorized by this rule. Subdivision (a) also retains provisions of the former rule that prescribe the date the notice of appeal is deemed filed if the appellant files it prematurely or in the wrong court.

Subdivision (b), like former Rule 8002(b) and F.R.App.P. 4(a), tolls the time for filing a notice of appeal when certain postjudgment motions are filed, and it prescribes the effective date of a notice of appeal that is filed before the court disposes of all of the specified motions. As under the former rule, a party that wants to appeal the court's disposition of the motion or the alteration or amendment of a judgment, order, or decree in response to such a motion must file a notice of appeal or, if it has already filed one, an amended notice of appeal.

Although Rule 8003(a)(3)(C) requires a notice of appeal to be accompanied by the required fee, no additional fee is required for the filing of an amended notice of appeal.

Subdivision (c) mirrors the provisions of F.R.App.P. 4(c)(1) and (2), which specify timing rules for a notice of appeal filed by an inmate confined in an institution.

Subdivision (d) continues to allow the court to grant an extension of time to file a notice of appeal, except with respect to certain specified judgments, orders, and decrees.

Rule 8003. Appeal as of Right—How Taken; Docketing the Appeal

1 (a) FILING THE NOTICE OF APPEAL.

2 (1) *In General*. An appeal from a judgment, order,
3 or decree of a bankruptcy court to a district court or BAP
4 under 28 U.S.C. § 158(a)(1) or (a)(2) may be taken only by
5 filing a notice of appeal with the bankruptcy clerk within
6 the time allowed by Rule 8002.

7 (2) *Effect of Not Taking Other Steps*. An
8 appellant's failure to take any step other than the timely
9 filing of a notice of appeal does not affect the validity of
10 the appeal, but is ground only for the district court or BAP
11 to act as it considers appropriate, including dismissing the
12 appeal.

13 (3) *Contents*. The notice of appeal must:

14 (A) conform substantially to the appropriate
15 Official Form;

16 (B) be accompanied by the judgment, order,
17 or decree, or the part of it, being appealed; and

18 (C) be accompanied by the prescribed fee.

19 (4) *Additional Copies*. If requested to do so, the
20 appellant must furnish the bankruptcy clerk with enough
21 copies of the notice to enable the clerk to comply with

22 subdivision (c).

23 (b) JOINT OR CONSOLIDATED APPEALS.

24 (1) *Joint Notice of Appeal*. When two or more

25 parties are entitled to appeal from a judgment, order, or

26 decree of a bankruptcy court and their interests make

27 joinder practicable, they may file a joint notice of appeal.

28 They may then proceed on appeal as a single appellant.

29 (2) *Consolidating Appeals*. When parties have

30 separately filed timely notices of appeal, the district court

31 or BAP may join or consolidate the appeals.

32 (c) ~~SERVING~~TRANSMITTING THE NOTICE OF

33 APPEAL.

34 (1) *Transmitting to the United States Trustee and*

35 *Other Parties*. The bankruptcy clerk must transmit the

36 notice of appeal to the United States trustee and to counsel

37 of record for each party to the appeal, excluding the

38 appellant. If a party is proceeding pro se, the clerk must

39 send the notice of appeal to the party's last known address.

40 The clerk must note, on each copy, the date when the notice

41 of appeal was filed.

42 (2) *Effect of Failing to Transmit Notice*. The

43 bankruptcy clerk's failure to transmit notice to a party or

44 the United States trustee does not affect the validity of

45 the appeal.

46 (3) *Noting ~~Service~~Transmission on the Docket.*

47 The clerk must note on the docket the names of the parties

48 ~~served~~to whom the notice of appeal was transmitted and the

49 date and method of the ~~service~~transmission.

50 (d) TRANSMITTING THE NOTICE OF APPEAL TO

51 THE DISTRICT COURT OR BAP; DOCKETING THE APPEAL.

52 (1) *Transmitting the Notice.* The bankruptcy clerk

53 must promptly transmit the notice of appeal to the BAP

54 clerk if a BAP has been established for appeals from that

55 district and the appellant has not elected to have the district

56 court hear the appeal. Otherwise, the bankruptcy clerk

57 must promptly transmit the notice to the district clerk.

58 (2) *Docketing in the District Court or BAP.* Upon

59 receiving the notice of appeal, the district or BAP clerk

60 must docket the appeal under the title of the bankruptcy

61 ~~court action~~case and the title of the adversary proceeding, if

62 any, and must identify the appellant, adding the appellant's

63 name if necessary.

COMMITTEE NOTE

This rule is derived from several former Bankruptcy Rule and

Appellate Rule provisions. It addresses appeals as of right, joint and consolidated appeals, service of the notice of appeal, and the timing of the docketing of an appeal in the district court or BAP.

Subdivision (a) incorporates, with stylistic changes, much of the content of former Rule 8001(a) regarding the taking of an appeal as of right under 28 U.S.C. § 158(a)(1) or (2). The rule now requires that the judgment, order, or decree being appealed be attached to the notice of appeal.

Subdivision (b), which is an adaptation of F.R.App.P. 3(b), permits the filing of a joint notice of appeal by multiple appellants that have sufficiently similar interests that their joinder is practicable. It also allows the district court or BAP to consolidate appeals taken separately by two or more parties.

Subdivision (c) is derived from former Rule 8004 and F.R.App.P. 3(d). Under Rule 8001(c), the former rule's requirement that service of the notice of appeal be accomplished by mailing is generally modified to require that the bankruptcy clerk ~~serve~~transmit the notice of appeal to counsel by electronic means. ~~Service on~~Transmission to pro se parties must be made by sending the notice to the address most recently provided to the court.

Subdivision (d) modifies the provision of former Rule 8007(b), which delayed the docketing of an appeal by the district court or BAP until the record was complete and the bankruptcy clerk transmitted it. The new provision, adapted from F.R.App.P. 3(d) and 12(a), requires the bankruptcy clerk to promptly transmit the notice of appeal to the clerk of the district court or BAP. Upon receipt of the notice of appeal, the district or BAP clerk must docket the appeal. Under this procedure, motions filed in the district court or BAP prior to completion and transmission of the record can generally be placed on the docket of an already pending appeal.

Rule 8004. Appeal by Leave—How Taken; Docketing the Appeal

1 (a) NOTICE OF APPEAL AND MOTION FOR LEAVE
2 TO APPEAL. To appeal from an interlocutory order or decree of a
3 bankruptcy court under 28 U.S.C. § 158(a)(3), a party must file
4 with the bankruptcy clerk a notice of appeal as prescribed by Rule
5 8003(a). The notice must:
6 (1) be filed within the time allowed by Rule 8002;
7 (2) be accompanied by a motion for leave to appeal
8 prepared in accordance with subdivision (b); and
9 (3) unless served electronically using the court's
10 transmission equipment, include proof of service in
11 accordance with Rule 8011(d).
12 (b) CONTENTS OF THE MOTION; RESPONSE.
13 (1) *Contents*. A motion for leave to appeal under
14 28 U.S.C. § 158(a)(3) must include the following:
15 (A) the facts necessary to understand the
16 question presented;
17 (B) the question itself;
18 (C) the relief sought;
19 (D) the reasons why leave to appeal should
20 be granted; and
21 (E) a copy of the interlocutory order or

22 decree and any related opinion or memorandum.

23 (2) *Response*. A party may file with the district or

24 BAP clerk a response in opposition or a cross-motion

25 within 14 days after the motion is served.

26 (c) TRANSMITTING THE NOTICE OF APPEAL AND

27 THE MOTION; DOCKETING THE APPEAL; DETERMINING

28 THE MOTION.

29 (1) *Transmitting to the District Court or BAP*. The

30 bankruptcy clerk must promptly transmit the notice of

31 appeal and the motion for leave to the BAP clerk if a BAP

32 has been established for appeals from that district and the

33 appellant has not elected to have the district court hear the

34 appeal. Otherwise, the bankruptcy clerk must promptly

35 transmit the notice and motion to the district clerk.

36 (2) *Docketing in the District Court or BAP*. Upon

37 receiving the notice and motion, the district or BAP clerk

38 must docket the appeal under the title of the bankruptcy

39 ~~court action~~ case and the title of the adversary proceeding,

40 if any, and must identify the appellant, adding the

41 appellant's name if necessary.

42 (3) *Oral Argument Not Required*. The motion and

43 any response or cross-motion are submitted without oral

44 argument unless the district court or BAP orders otherwise.

45 ~~If the motion is denied, the district court or BAP must~~

46 ~~dismiss the appeal.~~

47 (d) FAILURE TO FILE A MOTION WITH A NOTICE

48 OF APPEAL. If an appellant timely files a notice of appeal under

49 this rule but does not include a motion for leave, the district court

50 or BAP may order the appellant to file a motion for leave, or treat

51 the notice of appeal as a motion for leave and either grant or deny

52 it. If the court orders that a motion for leave be filed, the appellant

53 must do so within 14 days after the order is entered, unless the

54 order provides otherwise.

55 (e) DIRECT APPEAL TO A COURT OF APPEALS. If

56 leave to appeal an interlocutory order or decree is required under

57 28 U.S.C. § 158(a)(3), an authorization of a direct appeal by the

58 court of appeals under 28 U.S.C. § 158(d)(2) satisfies the

59 requirement.

COMMITTEE NOTE

This rule is derived from former Rules 8001(b) and 8003 and F.R.App.P. 5. It retains the practice for interlocutory bankruptcy appeals of requiring a notice of appeal to be filed along with a motion for leave to appeal. Like current Rule 8003, it alters the timing of the docketing of the appeal in the district court or BAP.

Subdivision (a) requires a party seeking leave to appeal under 28 U.S.C. § 158(a)(3) to file with the bankruptcy clerk both a notice of appeal and a motion for leave to appeal.

Subdivision (b) prescribes the contents of the motion, retaining the requirements of former Rule 8003(a). It also continues to allow another party to file a cross-motion or response to the appellant's motion. Because of the prompt docketing of the appeal under the current rule, the cross-motion or response must be filed in the district court or BAP, rather than in the bankruptcy court as the former rule required.

Subdivision (c) requires the bankruptcy clerk to transmit promptly to the district court or BAP the notice of appeal and the motion for leave to appeal. Upon receipt of the notice and the motion, the district or BAP clerk must docket the appeal. Unless the district court or BAP orders otherwise, no oral argument will be held on the motion.

Subdivision (d) retains the provisions of former Rule 8003(c). It provides that if the appellant timely files a notice of appeal, but fails to file a motion for leave to appeal, the court can either direct that a motion be filed or treat the notice of appeal as the motion and either grant or deny leave.

Subdivision (e), like former Rule 8003(d), treats the authorization of a direct appeal by the court of appeals as a grant of leave to appeal under 28 U.S.C. § 158(a)(3) if the district court or BAP has not already granted leave. Thus, a separate order granting leave to appeal is not required. If the court of appeals grants permission to appeal, the record must be assembled and transmitted in accordance with Rules 8009 and 8010.

Rule 8005. Election to Have an Appeal Heard by the District Court Instead of the BAP

1 (a) FILING OF A STATEMENT OF ELECTION. To
2 elect to have an appeal heard by the district court, a party must:
3 (1) file a statement of election ~~that conforms~~
4 | ~~substantially to~~using the appropriate Official Form; and
5 (2) do so within the time prescribed by 28 U.S.C.
6 § 158(c)(1).
7 (b) TRANSFERRING THE DOCUMENTS RELATED
8 TO THE APPEAL. Upon receiving an appellant's timely
9 statement of election, the bankruptcy clerk must transmit to the
10 district clerk all documents related to the appeal. Upon receiving a
11 timely statement of election by a party other than the appellant, the
12 BAP clerk must transmit to the district clerk all documents related
13 | to the appeal and notify the bankruptcy clerk of the transfer.
14 (c) DETERMINING THE VALIDITY OF AN
15 ELECTION. A party seeking a determination of the validity of an
16 election must file a motion in the court where the appeal is then
17 pending. The motion must be filed within 14 days after the
18 statement of election is filed.
19 (d) MOTION FOR LEAVE WITHOUT A NOTICE OF
20 APPEAL—EFFECT ON THE TIMING OF AN ELECTION. If
21 an appellant moves for leave to appeal under Rule 8004 but fails to

22 file a separate notice of appeal with the motion, the motion must be

23 treated as a notice of appeal for purposes of determining the

24 timeliness of a statement of election.

COMMITTEE NOTE

This rule, which implements 28 U.S.C. § 158(c)(1), is derived from former Rule 8001(e). It applies only in districts in which an appeal to a BAP is authorized.

As the former rule required, subdivision (a) provides that an appellant that elects to have a district court, rather than a BAP, hear its appeal must file with the bankruptcy clerk a statement of election when it files its notice of appeal. The statement must ~~conform substantially to~~be made using the appropriate Official Form. For appellants, that statement is included in the Notice of Appeal Official Form. If a BAP has been established for appeals from the bankruptcy court and the appellant does not file a timely statement of election, any other party that elects to have the district court hear the appeal must file a statement of election, using the appropriate Official Form, with the BAP clerk no later than 30 days after service of the notice of appeal.

Subdivision (b) requires the bankruptcy clerk to transmit all appeal documents to the district clerk if the appellant files a timely statement of election. If the appellant does not make that election, the bankruptcy clerk must transmit those documents to the BAP clerk~~, and u~~. Upon a timely election by any other party, the BAP clerk must promptly transmit the appeal documents to the district clerk and notify the bankruptcy clerk that the appeal has been transferred.

Subdivision (c) provides a new procedure for the resolution of disputes regarding the validity of an election. A motion seeking the determination of the validity of an election must be filed no later than 14 days after the statement of election is filed. Nothing in this rule prevents a court from determining the validity of an election on its own motion.

Subdivision (d) provides that, in the case of an appeal by leave, if the appellant files a motion for leave to appeal but fails to file a notice of appeal, the filing and service of the motion will be treated for timing purposes under this rule as the filing and service of the notice of appeal.

Rule 8006. Certifying a Direct Appeal to the Court of Appeals

1 (a) EFFECTIVE DATE OF A CERTIFICATION. A
2 certification of a judgment, order, or decree of a bankruptcy court
3 for direct review in a court of appeals under 28 U.S.C. § 158(d)(2)
4 is effective when:
5 (1) the certification has been filed;
6 (2) a timely appeal has been taken under Rule 8003
7 or 8004; and
8 (3) the notice of appeal has become effective under
9 Rule 8002.
10 (b) FILING THE CERTIFICATION. The certification
11 must be filed with the clerk of the court where the matter is
12 pending. For purposes of this rule, a matter remains pending in the
13 | bankruptcy court for 30 days after the effective date under Rule
14 | 8002 of the first notice of appeal from the judgment, order, or
15 decree for which direct review is sought. A matter is pending in
16 the district court or BAP thereafter.
17 (c) JOINT CERTIFICATION BY ALL APPELLANTS
18 AND APPELLEES. A joint certification by all the appellants and
19 appellees under 28 U.S.C. § 158(d)(2)(A) must be made by using
20 the appropriate Official Form. The parties may supplement the
21 certification with a short statement of the basis for the certification,

22 which may include the information listed in subdivision (f)(2).

23 (d) THE COURT THAT MAY MAKE THE

24 CERTIFICATION. Only the court where the matter is pending, as

25 provided in subdivision (b), may certify a direct review on request

26 of parties or on its own motion.

27 (e) CERTIFICATION ON THE COURT'S OWN

28 MOTION.

29 (1) *How Accomplished*. A certification on the

30 court's own motion must be set forth in a separate

31 document. The clerk of the certifying court must serve it

32 on the parties to the appeal in the manner required for

33 service of a notice of appeal under Rule 8003(c)(1). The

34 certification must be accompanied by an opinion or

35 memorandum that contains the information required by

36 subdivision (f)(2)(A)-(D).

37 (2) *Supplemental Statement by a Party*. Within 14

38 days after the court's certification, a party may file with the

39 clerk of the certifying court a short supplemental statement

40 regarding the merits of certification.

41 (f) CERTIFICATION BY THE COURT ON REQUEST.

42 (1) *How Requested*. A request by a party for

43 certification that a circumstance specified in 28 U.S.C.

44 §158(d)(2)(A)(i)-(iii) applies—or a request by a majority of
45 the appellants and a majority of the appellees—must be
46 filed with the clerk of the court where the matter is pending
47 within 60 days after the entry of the judgment, order, or
48 decree.

49 (2) *Service and Contents*. The request must be
50 served on all parties to the appeal in the manner required
51 for service of a notice of appeal under Rule 8003(c)(1), and
52 it must include the following:

53 (A) the facts necessary to understand the
54 question presented;

55 (B) the question itself;

56 (C) the relief sought;

57 (D) the reasons why the direct appeal
58 should be allowed, including which circumstance
59 specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii)
60 applies; and

61 (E) a copy of the judgment, order, or decree
62 and any related opinion or memorandum.

63 (3) *Time to File a Response or a Cross-Request*. A
64 party may file a response to the request within 14 days after
65 the request is served, or such other time as the court where

66 the matter is pending allows. A party may file a cross-
67 request for certification within 14 days after the request is
68 served, or within 60 days after the entry of the judgment,
69 order, or decree, whichever occurs first.
70 (4) *Oral Argument Not Required*. The request,
71 cross-request, and any response are ~~not governed by Rule~~
72 ~~9014 and are~~ submitted without oral argument unless the
73 court where the matter is pending orders otherwise.
74 (5) *Form and Service of the Certification*. If the
75 court certifies a direct appeal in response to the request, it
76 must do so in a separate document. The certification must
77 be served on the parties to the appeal in the manner
78 required for service of a notice of appeal under Rule
79 8003(c)(1).
80 (g) PROCEEDING IN THE COURT OF APPEALS
81 FOLLOWING A CERTIFICATION. Within 30 days after the
82 date the certification becomes effective under subdivision (a), a
83 request for permission to take a direct appeal to the court of
84 appeals must be filed with the circuit clerk in accordance with F.
85 R. App. P. 6(c).

COMMITTEE NOTE

This rule is derived from former Rule 8001(f), and it provides the procedures for the certification of a direct appeal of a judgment, order, or decree of a bankruptcy court to the court of appeals under 28 U.S.C. § 158(d)(2). Once a case has been certified in the bankruptcy court, the district court, or the BAP for direct appeal and a request for permission to appeal has been timely filed with the circuit clerk, the Federal Rules of Appellate Procedure govern further proceedings in the court of appeals.

Subdivision (a), like the former rule, requires that an appeal be properly taken—now under Rule 8003 or 8004—before a certification for direct review in the court of appeals takes effect. This rule requires the timely filing of a notice of appeal under Rule 8002 and accounts for the delayed effectiveness of a notice of appeal under the circumstances specified in that rule. Ordinarily, a notice of appeal is effective when it is filed in the bankruptcy court. Rule 8002, however, delays the effectiveness of a notice of appeal when (1) it is filed after the announcement of a decision or order but prior to the entry of the judgment, order, or decree; or (2) it is filed after the announcement or entry of a judgment, order, or decree but before the bankruptcy court disposes of certain postjudgment motions.

When the bankruptcy court enters an interlocutory order or decree that is appealable under 28 U.S.C. § 158(a)(3), certification for direct review in the court of appeals may take effect before the district court or BAP grants leave to appeal. The certification is effective when the actions specified in subdivision (a) have occurred. Rule 8004(e) provides that if the court of appeals grants permission to take a direct appeal before leave to appeal an interlocutory ruling has been granted, the authorization by the court of appeals is treated as the granting of leave to appeal.

Subdivision (b) provides that a certification must be filed in the court where the matter is pending, as determined by this subdivision. This provision modifies the former rule. Because of the prompt docketing of appeals in the district court or BAP under Rules 8003 and 8004, a matter is deemed—for purposes of this rule only—to remain pending in the bankruptcy court for 30 days after the effective date of the notice of appeal. This provision will in appropriate cases give the bankruptcy judge, who will be familiar with the matter being appealed, an opportunity to decide whether certification for direct review is appropriate. Similarly, subdivision (d) provides that only the court where the matter is then pending according to subdivision (b) may make a certification on its own motion or on the request of one or more parties.

Section 158(d)(2) provides three different ways in which an appeal may be certified for direct review. Implementing these options, the rule provides in subdivision (c) for the joint certification by all appellants and appellees; in subdivision (e) for the bankruptcy court's, district court's, or BAP's certification on its own motion; and in subdivision (f) for the bankruptcy court's, district court's, or BAP's certification on request of a party or a majority of appellants and a majority of appellees.

Subdivision (g) requires that, once a certification for direct review is made, a request to the court of appeals for permission to take a direct appeal to that court must be filed with the clerk of the court of appeals no later than 30 days after the effective date of the certification. Federal Rule of Appellate Procedure 6(c), which incorporates all of F.R.App.P. 5 except subdivision (a)(3), prescribes the procedure for requesting the permission of the court of appeals and governs proceedings that take place thereafter in that court.

Rule 8007. Stay Pending Appeal; Bonds; Suspension of Proceedings

1 (a) INITIAL MOTION IN THE BANKRUPTCY COURT.

2 (1) *In General*. Ordinarily, a party must move first

3 in the bankruptcy court for the following relief:

4 (A) a stay of a judgment, order, or decree of

5 the bankruptcy court pending appeal;

6 (B) the approval of a supersedeas bond;

7 (C) an order suspending, modifying,

8 restoring, or granting an injunction while an appeal

9 is pending; or

10 (D) the suspension or continuation of

11 proceedings in a case or other relief permitted by

12 subdivision (e).

13 (2) *Time to File*. The motion may be made either

14 before or after the notice of appeal is filed.

15 | (b) MOTION IN THE DISTRICT COURT, THE BAP,

16 | OR THE COURT OF APPEALS ON DIRECT APPEAL~~, THE~~

17 ~~DISTRICT COURT, OR THE BAP~~.

18 (1) *Request for Relief*. A motion for the relief

19 specified in subdivision (a)(1)—or to vacate or modify a

20 bankruptcy court's order granting such relief—may be

21 made in the court where the appeal is pending~~ or where it~~

22 ~~will be taken~~.

23 (2) *Showing or Statement Required*. The motion

24 must:

25 (A) show that moving first in the

26 bankruptcy court would be impracticable; or

27 (B) if a motion was made in the bankruptcy

28 court, either state that the court has not yet ruled on

29 the motion, or state that the court has ruled and set

30 out any reasons given for the ruling.

31 (3) *Additional Content*. The motion must also

32 include:

33 (A) the reasons for granting the relief

34 requested and the facts relied upon;

35 (B) affidavits or other sworn statements

36 supporting facts subject to dispute; and

37 (C) relevant parts of the record.

38 (4) *Serving Notice*. The movant must give

39 reasonable notice of the motion to all parties.

40 (c) FILING A BOND OR OTHER SECURITY. The

41 district court, BAP, or court of appeals may condition relief on

42 filing a bond or other appropriate security with the bankruptcy

43 court.

44 (d) BOND FOR A TRUSTEE OR THE UNITED

45 STATES. The court may require a trustee to file a bond or other

46 appropriate security when the trustee appeals. A bond or other

47 security is not required when an appeal is taken by the United

48 States, its officer, or its agency or by direction of any department

49 of the federal government.

50 (e) CONTINUED PROCEEDINGS IN THE

51 BANKRUPTCY COURT. Despite Rule 7062 and subject to the

52 authority of the district court, BAP, or court of appeals, the

53 bankruptcy court may:

54 | (1) suspend or ~~continue~~order the continuation of

55 other proceedings in the case; or

56 (2) issue any other appropriate orders during the

57 pendency of an appeal to protect the rights of all parties in

58 interest.

COMMITTEE NOTE

This rule is derived from former Rule 8005 and F.R.App.P. 8. It now applies to direct appeals in courts of appeals.

Subdivision (a), like the former rule, requires a party ordinarily to seek relief pending an appeal in the bankruptcy court. Subdivision (a)(1) expands the list of relief enumerated in F.R.App.P. 8(a)(1) to reflect bankruptcy practice. It includes the suspension or continuation of other proceedings in the bankruptcy case, as authorized by subdivision (e). Subdivision (a)(2) clarifies that a motion for a stay pending appeal, approval of a supersedeas bond, or any other relief specified in paragraph (1) may be made in the bankruptcy court before or after the filing of a

notice of appeal.

Subdivision (b) authorizes a party to seek the relief specified in (a)(1), or the vacation or modification of the granting of such relief, by means of a motion filed in the court where the appeal is ~~pending or will be taken—district~~pending—district court, BAP, or the court of appeals on direct appeal. Accordingly, a notice of appeal need not be filed with respect to a bankruptcy court's order granting or denying such a motion. The motion for relief in the district court, BAP, or court of appeals must state why it was impracticable to seek relief initially in the bankruptcy court, if a motion was not filed there, or why the bankruptcy court denied the relief sought.

Subdivisions (c) and (d) retain the provisions of the former rule that permit the district court or BAP—and now the court of appeals—to condition the granting of relief on the posting of a bond by the appellant, except when that party is a federal government entity. Rule 9025 governs proceedings against sureties.

Subdivision (e) retains the provision of the former rule that authorizes the bankruptcy court to decide whether to suspend or allow the continuation of other proceedings in the bankruptcy case while the matter for which a stay has been sought is pending on appeal.

Rule 8008. Indicative Rulings

1 (a) RELIEF PENDING APPEAL. If a party files a timely
2 motion in the bankruptcy court for relief that the court lacks
3 authority to grant because of an appeal that has been docketed and
4 is pending, the bankruptcy court may:
5 (1) defer considering the motion;
6 (2) deny the motion; or
7 (3) state that the court would grant the motion if the
8 court where the appeal is pending remands for that purpose,
9 or state that the motion raises a substantial issue.
10 (b) NOTICE TO THE COURT WHERE THE APPEAL IS
11 PENDING. The movant must promptly notify the clerk of the
12 court where the appeal is pending if the bankruptcy court states
13 that it would grant the motion or that the motion raises a
14 substantial issue.
15 (c) REMAND AFTER AN INDICATIVE RULING. If the
16 bankruptcy court states that it would grant the motion or that the
17 motion raises a substantial issue, the district court or BAP may
18 remand for further proceedings, but it retains jurisdiction unless it
19 expressly dismisses the appeal. If the district court or BAP
20 remands but retains jurisdiction, the parties must promptly notify

21 the clerk of that court when the bankruptcy court has decided the

22 motion on remand.

COMMITTEE NOTE

This rule is an adaptation of F.R.Civ.P. 62.1 and F.R.App.P. 12.1. It provides a procedure for the issuance of an indicative ruling when a bankruptcy court determines that, because of a pending appeal, the court lacks jurisdiction to grant a request for relief that the court concludes is meritorious or raises a substantial issue. The rule does not attempt to define the circumstances in which an appeal limits or defeats the bankruptcy court's authority to act in the face of a pending appeal. In contrast, Rule 8002(b) identifies motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before the last such motion is resolved. In those circumstances, the bankruptcy court has authority to resolve the motion without resorting to the indicative ruling procedure.

Subdivision (b) requires the movant to notify the court where an appeal is pending if the bankruptcy court states that it would grant the motion or that it raises a substantial issue. This provision applies to appeals pending in the district court, the BAP, or the court of appeals.

Federal Rules of Appellate Procedure 6 and 12.1 govern the procedure in the court of appeals following notification of the bankruptcy court's indicative ruling.

Subdivision (c) of this rule governs the procedure in the district court or BAP upon notification that the bankruptcy court has issued an indicative ruling. The district court or BAP may remand to the bankruptcy court for a ruling on the motion for relief. The district court or BAP may also remand all proceedings, thereby terminating the initial appeal, if it expressly states that it is dismissing the appeal. It should do so, however, only when the appellant has stated clearly its intention to abandon the appeal. Otherwise, the district court or BAP may remand for the purpose of ruling on the motion, while retaining jurisdiction to proceed with the appeal after the bankruptcy court rules, provided that the appeal is not then moot and a party wishes to proceed.

Rule 8009. Record on Appeal; Sealed Documents

1 (a) DESIGNATING THE RECORD ON APPEAL;

2 STATEMENT OF THE ISSUES.

3 (1) *Appellant*.

4 (A) The appellant must file with the

5 bankruptcy clerk and serve on the appellee a

6 designation of the items to be included in the record

7 on appeal and a statement of the issues to be

8 presented.

9 (B) The appellant must file and serve the

10 designation and statement within 14 days after:

11 (i) the appellant's notice of appeal as

12 of right becomes effective under Rule 8002;

13 or

14 (ii) an order granting leave to appeal

15 is entered.

16 A designation and statement served prematurely

17 must be treated as served on the first day on which

18 filing is timely.

19 (2) *Appellee and Cross-Appellant.* Within 14 days

20 after being served, the appellee may file with the

21 bankruptcy clerk and serve on the appellant a designation

22 of additional items to be included in the record. An
23 appellee who files a cross-appeal must file and serve a
24 designation of additional items to be included in the record
25 and a statement of the issues to be presented on the cross-
26 appeal.

27 (3) *Cross-Appellee*. Within 14 days after service of
28 the cross-appellant's designation and statement, a cross-
29 | appellee may file with the bankruptcy clerk and serve on
30 the cross-appellant a designation of additional items to be
31 included in the record.

32 (4) *Record on Appeal*. The record on appeal must
33 | include the following:

34 | • the docket entries maintained by the
35 | bankruptcy clerk;
36 | • items designated by the parties;
37 • the notice of appeal;
38 • the judgment, order, or decree being
39 appealed;
40 • any order granting leave to appeal;
41 • any certification required for a direct appeal
42 to the court of appeals;
43 • any opinion, findings of fact, and

44 conclusions of law relating to the issues on appeal,

45 including transcripts of all oral rulings;

46 • any transcript ordered under subdivision (b);

47 any statement required by

48 subdivision (c);

49 and

50 • any additional items from the record that the

51 court where the appeal is pending orders.

52 (5) *Copies for the Bankruptcy Clerk*. If paper

53 copies are needed, a party filing a designation of items

54 must provide a copy of any of those items that the

55 bankruptcy clerk requests. If the party fails to do so, the

56 bankruptcy clerk must prepare the copy at the party's

57 expense.

58 (b) TRANSCRIPT OF PROCEEDINGS.

59 (1) *Appellant's Duty to Order*. Within the time

60 period prescribed by subdivision (a)(1), the appellant must:

61 (A) order in writing from the reporter, as

62 defined in Rule 8010(a)(1), a transcript of such

63 parts of the proceedings not already on file as the

64 appellant considers necessary for the appeal, and

65 file a copy of the order with the bankruptcy clerk;

66 or

67 (B) file with the bankruptcy clerk a

68 certificate stating that the appellant is not ordering a

69 transcript.

70 (2) *Cross-Appellant's Duty to Order*. Within 14

71 days after the appellant files a copy of the transcript order

72 or a certificate of not ordering a transcript, the appellee as

73 cross-appellant must:

74 (A) order in writing from the reporter, as

75 defined in Rule 8010(a)(1), a transcript of such

76 additional parts of the proceedings as the cross-

77 appellant considers necessary for the appeal, and

78 file a copy of the order with the bankruptcy clerk;

79 or

80 (B) file with the bankruptcy clerk a

81 certificate stating that the cross-appellant is not

82 ordering a transcript.

83 (3) *Appellee's or Cross-Appellee's Right to Order*.

84 Within 14 days after the appellant or cross-appellant files a

85 copy of a transcript order or certificate of not ordering a

86 transcript, the appellee or cross-appellee may order in

87 writing from the reporter a transcript of such additional

88 parts of the proceedings as the appellee or cross-appellee

89 considers necessary for the appeal. A copy of the order

90 must be filed with the bankruptcy clerk.

91 (4) *Payment*. At the time of ordering, a party must
92 make satisfactory arrangements with the reporter for paying
93 the cost of the transcript.
94 (5) *Unsupported Finding or Conclusion.* If the
95 appellant intends to argue on appeal that a finding or
96 conclusion is unsupported by the evidence or is contrary to
97 the evidence, the appellant must include in the record a
98 transcript of all relevant testimony and copies of all
99 relevant exhibits.
100 (c) STATEMENT OF THE EVIDENCE WHEN A
101 TRANSCRIPT IS UNAVAILABLE. If a transcript of a hearing or
102 trial is unavailable, the appellant may prepare a statement of the
103 evidence or proceedings from the best available means, including
104 the appellant's recollection. The statement must be filed within
105 the time prescribed by subdivision (a)(1) and served on the
106 appellee, who may serve objections or proposed amendments
107 within 14 days after being served. The statement and any
108 objections or proposed amendments must then be submitted to the
109 bankruptcy court for settlement and approval. As settled and
110 approved, the statement must be included by the bankruptcy clerk
111 in the record on appeal.
112 (d) AGREED STATEMENT AS THE RECORD ON

113 APPEAL. Instead of the record on appeal as defined in
114 subdivision (a), the parties may prepare, sign, and submit to the
115 bankruptcy court a statement of the case showing how the issues
116 presented by the appeal arose and were decided in the bankruptcy
117 court. The statement must set forth only those facts alleged and
118 proved or sought to be proved that are essential to the court's
119 resolution of the issues. If the statement is accurate, it—together
120 with any additions that the bankruptcy court may consider
121 necessary to a full presentation of the issues on appeal—must be
122 approved by the bankruptcy court and must then be certified to the
123 court where the appeal is pending as the record on appeal. The
124 bankruptcy clerk must then transmit it to the clerk of that court
125 within the time provided by Rule 8010. A copy of the agreed
126 statement may be filed in place of the appendix required by Rule
127 8018(b) or, in the case of a direct appeal to the court of appeals, by
128 F.R.App.P. 30.
129 (e) CORRECTING OR MODIFYING THE RECORD.
130 (1) *Submitting to the Bankruptcy Court*. If any
131 difference arises about whether the record accurately
132 discloses what occurred in the bankruptcy court, the
133 difference must be submitted to and settled by the
134 bankruptcy court and the record conformed accordingly. If

135 an item has been improperly designated as part of the

136 record on appeal, a party may move to strike that item.

137 (2) *Correcting in Other Ways*. If anything material

138 to either party is omitted from or misstated in the record by

139 error or accident, the omission or misstatement may be

140 corrected, and a supplemental record may be certified and

141 transmitted:

142 (A) on stipulation of the parties;

143 (B) by the bankruptcy court before or after

144 the record has been forwarded; or

145 (C) by the court where the appeal is

146 pending.

147 (3) *Remaining Questions*. All other questions as to

148 the form and content of the record must be presented to the

149 court where the appeal is pending.

150 (f) SEALED DOCUMENTS. A document placed under

151 seal by the bankruptcy court may be designated as part of the

152 record on appeal. In doing so, a party must identify it without

153 revealing confidential or secret information, but the bankruptcy

154 clerk must not transmit it to the clerk of the court where the appeal

155 is pending as part of the record. Instead, a party must file a motion

156 with the court where the appeal is pending to accept the document

157 under seal. If the motion is granted, the movant must notify the

158 bankruptcy court of the ruling, and the bankruptcy clerk must

159 promptly transmit the sealed document to the clerk of the court

160 where the appeal is pending.

161 (g) OTHER NECESSARY ACTIONS. All parties to an

162 appeal must take any other action necessary to enable the

163 bankruptcy clerk to assemble and transmit the record.

COMMITTEE NOTE

This rule is derived from former Rule 8006 and F.R.App.P. 10 and 11(a). The provisions of this rule and Rule 8010 are applicable to appeals taken directly to a court of appeals under 28 U.S.C. § 158(d)(2), as well as to appeals to a district court or BAP. See F.R.App.P. 6(c)(2)(A) and (B).

The rule retains the practice of former Rule 8006 of requiring the parties to designate items to be included in the record on appeal. In this respect, the bankruptcy rule differs from the appellate rule. Among other things, F.R.App.P. 10(a) provides that the record on appeal consists of all the documents and exhibits filed in the case. This requirement would often be unworkable in a bankruptcy context because thousands of items might have been filed in the overall bankruptcy case.

Subdivision (a) provides the time period for an appellant to file a designation of items to be included in the record on appeal and a statement of the issues to be presented. It then provides for the designation of additional items by the appellee, cross-appellant, and cross-appellee, as well as for the cross-appellant's statement of the issues to be presented in its appeal. Subdivision (a)(4) prescribes the content of the record on appeal. Ordinarily, the bankruptcy clerk will not need to have paper copies of the designated items because the clerk will either transmit them to the appellate court electronically or otherwise make them available electronically. If the bankruptcy clerk requires a paper copy of some or all of the items designated as part of the record, the clerk may request the party that designated the item to provide the necessary copies, and the party must comply with the request or bear the cost of the clerk's copying.

Subdivision (b) governs the process for ordering a complete or partial transcript of the bankruptcy court proceedings. In situations in which a transcript is unavailable, subdivision (c) allows for the parties' preparation of a statement of the evidence or proceedings, which must be approved by the bankruptcy court.

Subdivision (d) adopts the practice of F.R.App.P. 10(d) of permitting the parties to agree on a statement of the case in place of the record on appeal. The statement must show how the issues on appeal arose and were decided in the bankruptcy court. It must be approved by the bankruptcy court in order to be certified as the record on appeal.

Subdivision (e), modeled on F.R.App.P. 10(e), provides a procedure for correcting the record on appeal if an item is improperly designated, omitted, or misstated.

Subdivision (f) is a new provision that governs the handling of any document that remains sealed by the bankruptcy court and that a party wants to include in the record on appeal. The party must request the court where the appeal is pending to accept the document under seal, and that motion must be granted before the bankruptcy clerk may transmit the sealed document to the district, BAP, or circuit clerk.

Subdivision (g) requires the parties' cooperation with the bankruptcy clerk in assembling and transmitting the record. It retains the requirement of former Rule 8006, which was adapted from F.R.App.P. 11(a).

Rule 8010. Completing and Transmitting the Record

1 (a) REPORTER'S DUTIES.

2 (1) *Proceedings Recorded Without a Reporter*

3 *Present*. If proceedings were recorded without a reporter

4 being present, the person or service ~~that the~~selected in

5 accordance with bankruptcy court ~~designates~~procedures to

6 transcribe the recording is the reporter for purposes of this

7 rule.

8 (2) *Preparing and Filing the Transcript*. The

9 reporter must prepare and file a transcript as follows:

10 (A) Upon receiving an order for a transcript

11 in accordance with Rule 8009(b), the reporter must

12 file in the bankruptcy court an acknowledgment of

13 the request that shows when it was received, and

14 when the reporter expects to have the transcript

15 completed.

16 (B) After completing the transcript, the

17 reporter must file it with the bankruptcy clerk, who

18 will notify the district, BAP, or circuit clerk of its

19 filing.

20 (C) If the transcript cannot be completed

21 within 30 days after receiving the order, the reporter

22 must request an extension of time from the
23 bankruptcy clerk. The clerk must enter on the
24 docket and notify the parties whether the extension
25 is granted.
26 (D) If the reporter does not file the
27 transcript on time, the bankruptcy clerk must notify
28 the bankruptcy judge.
29 (b) CLERK'S DUTIES.
30 (1) *Transmitting the Record—In General*. Subject
31 to Rule 8009(f) and subdivision (b)(5) of this rule, when
32 the record is complete, the bankruptcy clerk must transmit
33 to the clerk of the court where the appeal is pending either
34 the record or a notice that the record is available
35 electronically.
36 (2) *Multiple Appeals*. If there are multiple appeals
37 from a judgment, order, or decree, the bankruptcy clerk
38 must transmit a single record.
39 (3) *Receiving the Record*. Upon receiving the
40 record or notice that it is available electronically, the
41 district, BAP, or circuit clerk must enter that information
42 on the docket and promptly notify all parties to the appeal.

43 (4) *If Paper Copies Are Ordered*. If the court
44 where the appeal is pending directs that paper copies of the
45 record be provided, the clerk of that court must so notify
46 the appellant. If the appellant fails to provide them, the
47 bankruptcy clerk must prepare them at the appellant's
48 expense.
49 (5) *When Leave to Appeal is Requested*. Subject to
50 subdivision (c), if a motion for leave to appeal has been
51 filed under Rule 8004, the bankruptcy clerk must prepare
52 and transmit the record only after the district court, BAP, or
53 court of appeals grants leave.
54 (c) RECORD FOR A PRELIMINARY MOTION IN THE
55 DISTRICT COURT, BAP, OR COURT OF APPEALS. This
56 subdivision (c) applies if, before the record is transmitted, a party
57 moves in the district court, BAP, or court of appeals for any of the
58 following relief:
59 • leave to appeal;
60 • dismissal;
61 • a stay pending appeal;
62 • approval of a supersedeas bond, or additional
63 security on a bond or undertaking on appeal; or
64 • any other intermediate order.

65 The bankruptcy clerk must then transmit to the clerk of the court

66 where the relief is sought any parts of the record designated by a

67 party to the appeal or a notice that those parts are available

68 electronically.

COMMITTEE NOTE

This rule is derived from former Rule 8007 and F.R.App. P 11. It applies to an appeal taken directly to a court of appeals under 28 U.S.C. § 158(d)(2), as well as to an appeal to a district court or BAP.

Subdivision (a) generally retains the procedure of former Rule 8007(a) regarding the reporter's duty to prepare and file a transcript if a party requests one. It clarifies that the person or service that transcribes the recording of a proceeding is considered the reporter under this rule if the proceeding is recorded without a reporter being present in the courtroom. It also makes clear that the reporter must file with the bankruptcy court the acknowledgment of the request for a transcript and statement of the expected completion date, the completed transcript, and any request for an extension of time beyond 30 days for completion of the transcript.

Subdivision (b) requires the bankruptcy clerk to transmit the record to the district, BAP or circuit clerk when the record is complete and, in the case of appeals under 28 U.S.C. §158(a)(3), leave to appeal has been granted. This transmission will be made electronically, either by sending the record itself or sending notice that the record can be accessed electronically. The court where the appeal is pending may, however, require that a paper copy of some or all of the record be furnished, in which case the clerk of that court will direct the appellant to provide the copies. If the appellant does not do so, the bankruptcy clerk must prepare the copies at the appellant's expense.

In a change from former Rule 8007(b), subdivision (b) of this rule no longer directs the clerk of the appellate court to docket the appeal upon receipt of the record from the bankruptcy clerk. Instead, under Rules 8003(d) and 8004(c) and F.R.App.P. 12(a), the district, BAP, or circuit clerk dockets the appeal upon receipt of the notice of appeal or, in the case of appeals under 28 U.S.C. § 158(a)(3), the notice of appeal and the motion for leave to appeal. Accordingly, by the time the district, BAP, or circuit

clerk receives the record, the appeal will already be docketed in that court. The clerk of the appellate court must indicate on the docket and give notice to the parties to the appeal when the transmission of the record is received. Under Rule 8018(a) and F.R.App.P. 31, the briefing schedule is generally based on that date.

Subdivision (c) is derived from former Rule 8007(c) and F.R.App.P. 11(g) . It provides for the transmission of parts of the record that the parties designate for consideration by the district court, BAP, or court of appeals in ruling on specified preliminary motions filed prior to the preparation and transmission of the record on appeal.

Rule 8011. Filing and Service; Signature

1 (a) FILING.

2 (1) *With the Clerk*. A document required or

3 permitted to be filed in a district court or BAP must be filed

4 with the clerk of that court.

5 (2) *Method and Timeliness*.

6 (A) *In general*. Filing may be

7 accomplished by transmission to the clerk of the

8 district court or BAP. Except as provided in

9 subdivision (a)(2)(B) and (C), filing is timely only

10 if the clerk receives the document within the time

11 fixed for filing.

12 (B) *Brief or Appendix*. A brief or appendix

13 is also timely filed if, on or before the last day for

14 filing, it is:

15 (i) mailed to the clerk by first-class

16 mail—or other class of mail that is at least

17 as expeditious—postage prepaid, if the

18 district court's or BAP's procedures permit

19 or require a brief or appendix to be filed by

20 mailing; or

21 (ii) dispatched to a third-party

22 commercial carrier for delivery within 3
23 days to the clerk, if the court's procedures so
24 permit or require.
25 (C) *Inmate Filing*. A document filed by an
26 inmate confined in an institution is timely if
27 deposited in the institution's internal mailing
28 system on or before the last day for filing. If the
29 institution has a system designed for legal mail, the
30 inmate must use that system to receive the benefit
31 of this rule. Timely filing may be shown by a
32 declaration in compliance with 28 U.S.C. § 1746 or
33 by a notarized statement, either of which must set
34 forth the date of deposit and state that first-class
35 postage has been prepaid.
36 (D) *Copies*. If a document is filed
37 electronically, no paper copy is required. If a
38 document is filed by mail or delivery to the district
39 court or BAP, no additional copies are required.
40 But the district court or BAP may require by local
41 rule or by order in a particular case the filing or
42 furnishing of a specified number of paper copies.
43 (3) *Clerk's Refusal of Documents*. The court's

44 clerk must not refuse to accept for filing any document
45 transmitted for that purpose solely because it is not
46 presented in proper form as required by these rules or by
47 any local rule or practice.
48 (b) SERVICE OF ALL DOCUMENTS REQUIRED.
49 Unless a rule requires service by the clerk, a party must, at or
50 before the time of the filing of a document, serve it on the other
51 parties to the appeal. Service on a party represented by counsel
52 must be made on the party's counsel.
53 (c) MANNER OF SERVICE.
54 (1) *Methods*. Service must be made electronically,
55 unless it is being made by or on an individual who is not
56 represented by counsel or the court's governing rules
57 permit or require service by mail or other means of
58 delivery. Service may be made by or on an unrepresented
59 party by any of the following methods:
60 (A) personal delivery;
61 (B) mail; or
62 (C) third-party commercial carrier for
63 delivery within 3 days.
64 (2) *When Service Is Complete*. Service by
65 electronic means is complete on transmission, unless the

66 party making service receives notice that the document was
67 not transmitted successfully. Service by mail or by
68 commercial carrier is complete on mailing or delivery to
69 the carrier.
70 (d) PROOF OF SERVICE.
71 (1) *What Is Required*. A document presented for
72 filing must contain either:
73 (A) an acknowledgment of service by the
74 person served; or
75 (B) proof of service consisting of a
76 statement by the person who made service
77 certifying:
78 (i) the date and manner of service;
79 (ii) the names of the persons served;
80 and
81 (iii) the mail or electronic address,
82 the fax number, or the address of the place
83 of delivery, as appropriate for the manner of
84 service, for each person served.
85 (2) *Delayed Proof*. The district or BAP clerk may
86 permit documents to be filed without acknowledgment or
87 proof of service, but must require the acknowledgment or

88 proof to be filed promptly thereafter.

89 (3) *Brief or Appendix*. When a brief or appendix is

90 filed, the proof of service must also state the date and

91 manner by which it was filed.

92 (e) SIGNATURE. Every document filed electronically

93 must include the electronic signature of the person filing it or, if

94 the person is represented, the electronic signature of counsel. The

95 electronic signature must be provided by electronic means that are

96 consistent with any technical standards that the Judicial

97 Conference of the United States establishes. Every document filed

98 in paper form must be signed by the person filing the document or,

99 if the person is represented, by counsel.

COMMITTEE NOTE

This rule is derived from former Rule 8008 and F.R.App.P. 25. It adopts some of the additional details of the appellate rule, and it provides greater recognition of the possibility of electronic filing and service.

Subdivision (a) governs the filing of documents in the district court or BAP. Consistent with other provisions of these Part VIII rules, subdivision (a)(2) requires electronic filing of documents, including briefs and appendices, unless the district court's or BAP's procedures permit or require other methods of delivery to the court. An electronic filing is timely if it is received by the district or BAP clerk within the time fixed for filing. No additional copies need to be submitted when documents are filed electronically, by mail, or by delivery unless the district court or BAP requires them.

Subdivision (a)(3) provides that the district or BAP clerk may not refuse to accept a document for filing solely because its form does not comply with these rules or any local rule or practice. The district court or

BAP may, however, direct the correction of any deficiency in any document that does not conform to the requirements of these rules or applicable local rules, and may prescribe such other relief as the court deems appropriate.

Subdivisions (b) and (c) address the service of documents in the district court or BAP. Except for documents that the district or BAP clerk must serve, a party that makes a filing must serve copies of the document on the other parties to the appeal. Service on represented parties must be made on counsel. Subdivision (c) expresses the general requirement under these Part VIII rules that documents be sent electronically. *See* Rule 8001(c). Local court rules, however, may provide for other means of service, and subdivision (c) specifies non-electronic methods of service by or on an unrepresented party. Electronic service is complete upon transmission, unless the party making service receives notice that the transmission did not reach the person intended to be served in a readable form.

Subdivision (d) retains the former rule's provisions regarding proof of service of a document filed in the district court or BAP. In addition, it provides that a certificate of service must state the mail or electronic address or fax number to which service was made.

Subdivision (e) is a new provision that requires an electronic signature of counsel or an unrepresented filer for documents that are filed electronically in the district court or BAP. A local rule may specify a method of providing an electronic signature that is consistent with any standards established by the Judicial Conference of the United States. Paper copies of documents filed in the district court or BAP must bear an actual signature of counsel or the filer. By requiring a signature, subdivision (e) ensures that a readily identifiable attorney or party takes responsibility for every document that is filed.

Rule 8012. Corporate Disclosure Statement

1 (a) WHO MUST FILE. Any nongovernmental corporate
2 party appearing in the district court or BAP must file a statement
3 that identifies any parent corporation and any publicly held
4 corporation that owns 10% or more of its stock or states that there
5 is no such corporation.
6 (b) TIME TO FILE; SUPPLEMENTAL FILING. A party
7 must file the statement with its principal brief or upon filing a
8 motion, response, petition, or answer in the district court or BAP,
9 whichever occurs first, unless a local rule requires earlier filing.
10 Even if the statement has already been filed, the party's principal
11 brief must include a statement before the table of contents. A party
12 must supplement its statement whenever the required information
13 changes.

COMMITTEE NOTE

This rule is derived from F.R.App.P. 26.1. It requires the filing of corporate disclosure statements and supplemental statements in order to assist district court and BAP judges in determining whether they should recuse themselves. Rule 9001 makes the definitions in § 101 of the Code applicable to these rules. Under § 101(9) the word "corporation" includes a limited liability company, limited liability partnership, business trust, and certain other entities that are not designated under applicable law as corporations.

If filed separately from a brief, motion, response, petition, or answer, the statement must be filed and served in accordance with Rule 8011. Under Rule 8015(a)(7)(B)(iii), the corporate disclosure statement is not included in calculating applicable word-count limitations.

Rule 8013. Motions; Intervention

1 (a) CONTENTS OF A MOTION; RESPONSE; REPLY.

2 (1) *Request for Relief.* A request for an order or

3 other relief is made by filing a motion with the district or

4 BAP clerk, with proof of service on the other parties to the

5 appeal.

6 (2) *Contents of a Motion.*

7 (A) *Grounds and the Relief Sought.* A

8 motion must state with particularity the grounds for

9 the motion, the relief sought, and the legal argument

10 necessary to support it.

11 (B) *Motion to Expedite an Appeal.* A

12 motion to expedite an appeal must explain what

13 justifies considering the appeal ahead of other

14 matters. If the district court or BAP grants the

15 motion, it may accelerate the time to transmit the

16 record, the deadline for filing briefs and other

17 documents, oral argument, and the resolution of the

18 appeal. A motion to expedite an appeal may be

19 filed as an emergency motion under subdivision (d).

20 (C) *Accompanying Documents.*

21 (i) Any affidavit or other document

22 necessary to support a motion must be

23 served and filed with the motion.

24 (ii) An affidavit must contain only

25 factual information, not legal argument.

26 (iii) A motion seeking substantive

27 relief must include a copy of the bankruptcy

28 court's judgment, order, or decree, and any

29 accompanying opinion as a separate exhibit.

30 (D) *Documents Barred or Not Required.*

31 (i) A separate brief supporting or

32 responding to a motion must not be filed.

33 | (ii) ~~A~~Unless the court orders

34 | otherwise, a notice of motion is not required.

35 | (iii) ~~A~~Unless the court orders

36 | otherwise, a proposed order is not required.

37 (3) *Response and Reply; Time to File*. Unless the

38 district court or BAP orders otherwise,

39 (A) any party to the appeal may file a

40 response to the motion within 7 days after service of

41 the motion; and

42 (B) the movant may file a reply to a

43 response within 7 days after service of the response,

44 but may only address matters raised in the response.

45 (b) DISPOSITION OF A MOTION FOR A

46 PROCEDURAL ORDER. The district court or BAP may rule on a

47 motion for a procedural order—including a motion under Rule

48 9006(b) or (c)—at any time without awaiting a response. A party

49 adversely affected by the ruling may move to reconsider, vacate, or

50 modify it within 7 days after the procedural order is served.

51 (c) ORAL ARGUMENT. A motion will be decided

52 without oral argument unless the district court or BAP orders

53 otherwise.

54 (d) EMERGENCY MOTION.

55 (1) *Noting the Emergency*. When a movant

56 requests expedited action on a motion because irreparable

57 harm would occur during the time needed to consider a

58 response, the movant must insert the word "Emergency"

59 before the title of the motion.

60 (2) *Contents of the Motion*. The emergency motion

61 must

62 (A) be accompanied by an affidavit setting

63 out the nature of the emergency;

64 (B) state whether all grounds for it were

65 submitted to the bankruptcy court and, if not, why

66 the motion should not be remanded for the

67 | bankruptcy court to ~~reconsider~~consider;

68 (C) include the e-mail addresses, office

69 addresses, and telephone numbers of moving

70 counsel and, when known, of opposing counsel and

71 any unrepresented parties to the appeal; and

72 (D) be served as prescribed by Rule 8011.

73 (3) *Notifying Opposing Parties*. Before filing an

74 emergency motion, the movant must make every

75 practicable effort to notify opposing counsel and any

76 unrepresented parties in time for them to respond. The

77 affidavit accompanying the emergency motion must state

78 when and how notice was given or state why giving it was

79 impracticable.

80 (e) POWER OF A SINGLE BAP JUDGE TO

81 ENTERTAIN A MOTION.

82 (1) *Single Judge's Authority*. A BAP judge may

83 act alone on any motion, but may not dismiss or otherwise

84 determine an appeal, deny a motion for leave to appeal, or

85 deny a motion for a stay pending appeal if denial would

86 make the appeal moot.

87 (2) *Reviewing a Single Judge's Action*. The BAP

88 may review a single judge's action, either on its own

89 motion or on a party's motion.

90 (f) FORM OF DOCUMENTS; PAGE LIMITS; NUMBER

91 OF COPIES.

92 (1) *Format of a Paper Document*. Rule 27(d)(1)

93 F.R.App.P. applies in the district court or BAP to a paper

94 version of a motion, response, or reply.

95 (2) *Format of an Electronically Filed Document*.

96 A motion, response, or reply filed electronically must

97 comply with the requirements for a paper version regarding

98 covers, line spacing, margins, typeface, and type style. It

99 must also comply with the page limits under paragraph (3).

100 (3) *Page Limits*. Unless the district court or BAP

101 orders otherwise:

102 (A) a motion or a response to a motion must

103 not exceed 20 pages, exclusive of the corporate

104 disclosure statement and accompanying documents

105 authorized by subdivision (a)(2)(C); and

106 (B) a reply to a response must not exceed

107 10 pages.

108 (4) *Paper Copies*. Paper copies must be provided

109 only if required by local rule or by an order in a particular

110 case.

111 (g) INTERVENING IN AN APPEAL. Unless a statute

112 provides otherwise, an entity that seeks to intervene in an appeal

113 pending in the district court or BAP must move for leave to

114 intervene and serve a copy of the motion on the parties to the

115 appeal. The motion or other notice of intervention authorized by

116 statute must be filed within 30 days after the appeal is docketed. It

117 must concisely state the movant's interest, the grounds for

118 intervention, whether intervention was sought in the bankruptcy

119 court, why intervention is being sought at this stage of the

120 proceeding, and why participating as an amicus curiae would not

121 be adequate.

COMMITTEE NOTE

This rule is derived from former Rule 8011 and F.R.App.P. 15(d) and 27. It adopts many of the provisions of the appellate rules that specify the form and page limits of motions and accompanying documents, while also adjusting those requirements for electronic filing. In addition, it prescribes the procedure for seeking to intervene in the district court or BAP.

Subdivision (a) retains much of the content of former Rule 8011(a) regarding the contents of a motion, response, and reply. It also specifies the documents that may accompany a motion. Unlike the former rule, which allowed the filing of separate briefs supporting a motion, subdivision (a) now adopts the practice of F.R.App.P. 27(a) of prohibiting the filing of briefs supporting or responding to a motion. The motion or response itself must include the party's legal arguments.

Subdivision (a)(2)(B) clarifies the procedure for seeking to expedite

an appeal. A motion under this provision seeks to expedite the time for the disposition of the appeal as a whole, whereas an emergency motion—which is addressed by subdivision (d)—typically involves an urgent request for relief short of disposing of the entire appeal (for example, an emergency request for a stay pending appeal to prevent imminent mootness). In appropriate cases—such as when there is an urgent need to resolve the appeal quickly to prevent harm—a party may file a motion to expedite the appeal as an emergency motion.

Subdivision (b) retains the substance of former Rule 8011(b). It authorizes the district court or BAP to act on a motion for a procedural order without awaiting a response to the motion. It specifies that a party seeking reconsideration, vacation, or modification of the order must file a motion within 7 days after service of the order.

Subdivision (c) continues the practice of former Rule 8011(c) and F.R.App.P. 27(e) of dispensing with oral argument of motions in the district court or BAP unless the court orders otherwise.

Subdivision (d), which carries forward the content of former Rule 8011(d), governs emergency motions that the district court or BAP may rule on without awaiting a response when necessary to prevent irreparable harm. A party seeking expedited action on a motion in the district court or BAP must explain the nature of the emergency, whether all grounds in support of the motion were first presented to the bankruptcy court, and, if not, why the district court or BAP should not remand for reconsideration. The moving party must also explain the steps taken to notify opposing counsel and any unrepresented parties in advance of filing the emergency motion and, if they were not notified, why it was impracticable to do so.

Subdivision (e), like former Rule 8011(e) and similar to F.R.App.P. 27(c), authorizes a single BAP judge to rule on certain motions. This authority, however, does not extend to issuing rulings that would dispose of the appeal. For that reason, the rule now prohibits a single BAP judge from denying a motion for a stay pending appeal when the effect of that ruling would be to require dismissal of the appeal as moot. A ruling by a single judge is subject to review by the BAP.

Subdivision (f) incorporates by reference the formatting and appearance requirements of F.R.App.P. 27(d)(1). When paper versions of the listed documents are filed, they must comply with the requirements of the specified rules regarding reproduction, covers, binding, appearance, and format. When these documents are filed electronically, they must comply with the relevant requirements of the specified rules regarding covers and

format. Subdivision (f) also specifies page limits for motions, responses, and replies, which is a matter that former Rule 8011 did not address.

Subdivision (g) clarifies the procedure for seeking to intervene in a proceeding that has been appealed. It is based on F.R.App.P. 15(d), but it also requires the moving party to explain why intervention is being sought at the appellate stage. The former Part VIII rules did not address intervention.

Rule 8014. Briefs

1 (a) APPELLANT'S BRIEF. The appellant's brief must
2 contain the following under appropriate headings and in the order
3 indicated:
4 (1) a corporate disclosure statement, if required by
5 Rule 8012;
6 (2) a table of contents, with page references;
7 (3) a table of authorities—cases (alphabetically
8 arranged), statutes, and other authorities—with references
9 to the pages of the brief where they are cited;
10 (4) a jurisdictional statement, including:
11 (A) the basis for the bankruptcy court's
12 subject-matter jurisdiction, with citations to
13 applicable statutory provisions and stating relevant
14 facts establishing jurisdiction;
15 (B) the basis for the district court's or
16 BAP's jurisdiction, with citations to applicable
17 statutory provisions and stating relevant facts
18 establishing jurisdiction;
19 (C) the filing dates establishing the
20 timeliness of the appeal; and
21 (D) an assertion that the appeal is from a

22 final judgment, order, or decree, or information
23 establishing the district court's or BAP's
24 jurisdiction on another basis;
25 (5) a statement of the issues presented and, for each
26 one, a concise statement of the applicable standard of
27 appellate review;
28 (6) a concise statement of the case setting out the
29 facts relevant to the issues submitted for review, describing
30 the relevant procedural history, and identifying the rulings
31 presented for review, with appropriate references to the
32 record;
33 (7) a summary of the argument, which must contain
34 a succinct, clear, and accurate statement of the arguments
35 made in the body of the brief, and which must not merely
36 repeat the argument headings;
37 (8) the argument, which must contain the
38 appellant's contentions and the reasons for them, with
39 citations to the authorities and parts of the record on which
40 the appellant relies;
41 (9) a short conclusion stating the precise relief
42 sought; and
43 (10) the certificate of compliance, if required by

44 Rule 8015(a)(7) or (b).

45 (b) APPELLEE'S BRIEF. The appellee's brief must

46 conform to the requirements of subdivision (a)(1)-(8) and (10),

47 except that none of the following need appear unless the appellee

48 is dissatisfied with the appellant's statement:

49 (1) the jurisdictional statement;

50 (2) the statement of the issues and the applicable

51 standard of appellate review; and

52 (3) the statement of the case.

53 (c) REPLY BRIEF. The appellant may file a brief in reply

54 to the appellee's brief. A reply brief must comply with the

55 requirements of subdivision (a)(2)-(3).

56 (d) STATUTES, RULES, REGULATIONS, OR

57 SIMILAR AUTHORITY. If the court's determination of the

58 issues presented requires the study of the Code or other statutes,

59 rules, regulations, or similar authority, the relevant parts must be

60 set out in the brief or in an addendum.

61 (e) BRIEFS IN A CASE INVOLVING MULTIPLE

62 APPELLANTS OR APPELLEES. In a case involving more than

63 one appellant or appellee, including consolidated cases, any

64 number of appellants or appellees may join in a brief, and any

65 party may adopt by reference a part of another's brief. Parties may

66 also join in reply briefs.

77 (f) CITATION OF SUPPLEMENTAL AUTHORITIES.

78 If pertinent and significant authorities come to a party's attention

79 after the party's brief has been filed—or after oral argument but

80 before a decision—a party may promptly advise the district or

81 BAP clerk by a signed submission setting forth the citations. The

82 submission, which must be served on the other parties to the

83 appeal, must state the reasons for the supplemental citations,

84 referring either to the pertinent page of a brief or to a point argued

85 orally. The body of the submission must not exceed 350 words.

86 Any response must be made within 7 days after the party is served,

87 unless the court orders otherwise, and must be similarly limited.

COMMITTEE NOTE

This rule is derived from former Rule 8010(a) and (b) and F.R.App.P. 28. Adopting much of the content of Rule 28, it provides greater detail than former Rule 8010 contained regarding appellate briefs.

Subdivision (a) prescribes the content and structure of the appellant's brief. It largely follows former Rule 8010(a)(1), but, to ensure national uniformity, it eliminates the provision authorizing a district court or BAP to alter these requirements. Subdivision (a)(1) provides that when Rule 8012 requires an appellant to file a corporate disclosure statement, it must be placed at the beginning of the appellant's brief. Subdivision (a)(10) is new. It implements the requirement under Rule 8015(a)(7)(C) and (b) for the filing of a certificate of compliance with the limit on the number of words or lines allowed to be in a brief.

Subdivision (b) carries forward the provisions of former Rule 8010(a)(2).

Subdivision (c) is derived from F.R.App.P. 28(c). It authorizes an appellant to file a reply brief, which will generally complete the briefing process.

Subdivision (d) is similar to former Rule 8010(b), but it is reworded to reflect the likelihood that briefs will generally be filed electronically rather than in paper form.

Subdivision (e) mirrors F.R.App.P. 28(i). It authorizes multiple appellants or appellees to join in a single brief. It also allows a party to incorporate by reference portions of another party's brief.

Subdivision (f) adopts the procedures of F.R.App.P. 28(j) with respect to the filing of supplemental authorities with the district court or BAP after a brief has been filed or after oral argument. Unlike the appellate rule, it specifies a period of 7 days for filing a response to a submission of supplemental authorities. The supplemental submission and response must comply with the signature requirements of Rule 8011(e).

Rule 8015. Form and Length of Briefs; Form of Appendices and Other Papers.

1 (a) PAPER COPIES OF A BRIEF. If a paper copy of a
2 brief may or must be filed, the following provisions apply:
3 (1) *Reproduction*.
4 (A) A brief may be reproduced by any
5 process that yields a clear black image on light
6 paper. The paper must be opaque and unglazed.
7 Only one side of the paper may be used.
8 (B) Text must be reproduced with a clarity
9 that equals or exceeds the output of a laser printer.
10 (C) Photographs, illustrations, and tables
11 may be reproduced by any method that results in a
12 good copy of the original. A glossy finish is
13 acceptable if the original is glossy.
14 (2) *Cover*. The front cover of a brief must contain:
15 (A) the number of the case centered at the
16 top;
17 (B) the name of the court;
18 (C) the title of the case as prescribed by
19 Rule 8003(d)(2) or 8004(c)(2);
20 (D) the nature of the proceeding and the
21 name of the court below;

22 (E) the title of the brief, identifying the
23 party or parties for whom the brief is filed; and
24 (F) the name, office address, telephone
25 number, and e-mail address of counsel representing
26 the party for whom the brief is filed.
27 (3) *Binding*. The brief must be bound in any
28 manner that is secure, does not obscure the text, and
29 permits the brief to lie reasonably flat when open.
30 (4) *Paper Size, Line Spacing, and Margins*. The
31 brief must be on 8½-by-11 inch paper. The text must be
32 double-spaced, but quotations more than two lines long
33 may be indented and single-spaced. Headings and
34 footnotes may be single-spaced. Margins must be at least
35 one inch on all four sides. Page numbers may be placed in
36 the margins, but no text may appear there.
37 (5) *Typeface*. Either a proportionally spaced or
38 monospaced face may be used.
39 (A) A proportionally spaced face must
40 include serifs, but sans-serif type may be used in
41 headings and captions. A proportionally spaced
42 face must be 14-point or larger.
43 (B) A monospaced face may not contain

44 more than 10½ characters per inch.

45 (6) *Type Styles*. A brief must be set in plain, roman

46 style, although italics or boldface may be used for

47 emphasis. Case names must be italicized or underlined.

48 (7) *Length*.

49 (A) *Page limitation*. A principal brief must

50 not exceed 30 pages, or a reply brief 15 pages,

51 unless it complies with (B) and (C).

52 (B) *Type-volume limitation*.

53 (i) A principal brief is acceptable if:

54 • it contains no more

55 than 14,000 words; or

56 • it uses a monospaced

57 face and contains no more

58 than 1,300 lines of text.

59 (ii) A reply brief is acceptable if it

60 contains no more than half of the type

61 volume specified in item (i).

62 (iii) Headings, footnotes, and

63 quotations count toward the word and line

64 limitations. The corporate disclosure

65 statement, table of contents, table of

66 citations, statement with respect to oral
67 argument, any addendum containing
68 statutes, rules, or regulations, and any
69 certificates of counsel do not count toward
70 the limitation.
71 (C) *Certificate of Compliance*.
72 (i) A brief submitted under
73 subdivision (a)(7)(B) must include a
74 certificate signed by the attorney, or an
75 unrepresented party, that the brief complies
76 with the type-volume limitation. The person
77 preparing the certificate may rely on the
78 word or line count of the word-processing
79 system used to prepare the brief. The
80 certificate must state either:
81 • the number of words in the
82 brief; or
83 • the number of lines of
84 monospaced type in the brief.
85 (ii) The certification requirement is
86 satisfied by a certificate of compliance that
87 conforms substantially to the appropriate

88 Official Form.

89 (b) ELECTRONICALLY FILED BRIEFS. A brief filed
90 electronically must comply with subdivision (a), except for (a)(1),
91 (a)(3), and the paper requirement of (a)(4).

92 (c) PAPER COPIES OF APPENDICES. A paper copy of
93 an appendix must comply with subdivision (a)(1), (2), (3), and (4),
94 with the following exceptions:

95 (1) An appendix may include a legible photocopy
96 of any document found in the record or of a printed
97 decision.

98 (2) When necessary to facilitate inclusion of odd-
99 sized documents such as technical drawings, an appendix
100 may be a size other than 8½-by-11 inches, and need not lie
101 reasonably flat when opened.

102 (d) ELECTRONICALLY FILED APPENDICES. An
103 appendix filed electronically must comply with subdivision (a)(2)
104 and (4), except for the paper requirement of (a)(4).

105 (e) OTHER DOCUMENTS.

106 (1) *Motion*. Rule 8013(f) governs the form of a
107 motion, response, or reply.

108 (2) *Paper Copies of Other Documents*. A paper
109 copy of any other document, other than a submission under

110 Rule 8014(f), must comply with subdivision (a), with the

111 following exceptions:

112 (A) A cover is not necessary if the caption

113 and signature page together contain the information

114 required by subdivision (a)(2).

115 (B) Subdivision (a)(7) does not apply.

116 (3) *Other Documents Filed Electronically*. Any

117 other document filed electronically, other than a

118 submission under Rule 8014(f), must comply with the

119 appearance requirements of paragraph (2).

120 (f) LOCAL VARIATION. A district court or BAP must

121 accept documents that comply with the applicable requirements of

122 this rule. By local rule~~ or order in a particular case~~, a district court

123 or BAP may accept documents that do not meet all of the

124 requirements of this rule.

COMMITTEE NOTE

This rule is derived primarily from F.R.App.P. 32. Former Rule 8010(c) prescribed page limits for principal briefs and reply briefs. Those limits are now addressed by subdivision (a)(7) of this rule. In addition, the rule incorporates most of the detail of F.R.App.P. 32 regarding the appearance and format of briefs, appendices, and other documents, along with new provisions that apply when those documents are filed electronically.

Subdivision (a) prescribes the form requirements for briefs that are filed in paper form. It incorporates F.R.App.P. 32(a), except it does not include color requirements for brief covers, it requires the cover of a brief to

include counsel's e-mail address, and cross-references to the appropriate bankruptcy rules are substituted for references to the Federal Rules of Appellate Procedure.

Subdivision (a)(7) decreases the ~~page limits~~length of briefs, as measured by the number of pages, that ~~were~~was permitted by former Rule 8010(c)~~—from~~. Page limits are reduced from 50 to 30 pages for a principal brief and from 25 to 15 for a reply ~~brief—to~~brief in order to achieve consistency with F.R.App.P. 32(a)(7). ~~It~~But as permitted by the appellate rule, subdivision (a)(7) also permits the limits on the length of a brief to be measured by a word or line count, as an alternative to a page limit. ~~By adopting~~Basing the ~~same limits on brief length that the Federal Rules of Appellate Procedure impose, the amendment seeks to prevent a party whose case is eventually appealed to the court of appeals from having to substantially reduce the length of its brief in that court.~~calculation of brief length on either of the type-volume methods specified in subdivision (a)(7)(B) will result in briefs that may exceed the designated page limits in (a)(7)(A) and that may be approximately as long as allowed by the prior page limits.

Subdivision (b) adapts for briefs that are electronically filed subdivision (a)'s form requirements. With the use of electronic filing, the method of reproduction, method of binding, and use of paper become irrelevant. But information required on the cover, formatting requirements, and limits on brief length remain the same.

Subdivisions (c) and (d) prescribe the form requirements for appendices. Subdivision (c), applicable to paper appendices, is derived from F.R.App.P. 32(b), and subdivision (d) adapts those requirements for electronically filed appendices.

Subdivision (e), which is based on F.R.App.P. 32(c), addresses the form required for documents—in paper form or electronically filed—that these rules do not otherwise cover.

Subdivision (f), like F.R.App.P. 32(e), provides assurance to lawyers and parties that compliance with this rule's form requirements will allow a brief or other document to be accepted by any district court or BAP. A court may, however, by local rule or, under Rule 8028 by order in a particular case, choose to accept briefs and documents that do not comply with all of this rule's requirements. The decision whether to accept a brief that appears not to be in compliance with the rules must be made by the court. Under Rule 8011(a)(3), the clerk may not refuse to accept a document for filing solely because it is not presented in proper form as

required by these rules or any local rule or practice.

Under Rule 8011(e), the party filing the document or, if represented, its counsel must sign all briefs and other submissions. If the document is filed electronically, an electronic signature must be provided in accordance with Rule 8011(e).

Rule 8016. Cross-Appeals

1 (a) APPLICABILITY. This rule applies to a case in which
2 a cross-appeal is filed. Rules 8014(a)-(c), 8015(a)(7)(A)-(B), and
3 8018(a) do not apply to such a case, except as otherwise provided
4 in this rule.

5 (b) DESIGNATION OF APPELLANT. The party who
6 files a notice of appeal first is the appellant for purposes of this
7 rule and Rules 8018(b) and 8019. If notices are filed on the same
8 day, the plaintiff, petitioner, applicant, or movant in the proceeding
9 below is the appellant. These designations may be modified by the
10 parties' agreement or by court order.

11 (c) BRIEFS. In a case involving a cross-appeal:

12 (1) *Appellant's Principal Brief*. The appellant must
13 file a principal brief in the appeal. That brief must comply
14 with Rule 8014(a).

15 (2) *Appellee's Principal and Response Brief*. The
16 appellee must file a principal brief in the cross-appeal and
17 must, in the same brief, respond to the principal brief in the
18 appeal. That brief must comply with Rule 8014(a), except
19 that the brief need not include a statement of the case
20 unless the appellee is dissatisfied with the appellant's
21 statement.

22 (3) *Appellant's Response and Reply Brief*. The
23 appellant must file a brief that responds to the principal
24 brief in the cross-appeal and may, in the same brief, reply
25 to the response in the appeal. That brief must comply with
26 Rule 8014(a)(2)-(8) and (10), except that none of the
27 following need appear unless the appellant is dissatisfied
28 with the appellee's statement in the cross-appeal:
29 (A) the jurisdictional statement;
30 (B) the statement of the issues and the
31 applicable standard of appellate review; and
32 (C) the statement of the case.
33 (4) *Appellee's Reply Brief*. The appellee may file a
34 brief in reply to the response in the cross-appeal. That brief
35 must comply with Rule 8014(a)(2)-(3) and (10) and must
36 be limited to the issues presented by the cross-appeal.
37 (d) LENGTH.
38 (1) *Page Limitation*. Unless it complies with
39 paragraphs (2) and (3), the appellant's principal brief must
40 not exceed 30 pages; the appellee's principal and response
41 brief, 35 pages; the appellant's response and reply brief, 30
42 pages; and the appellee's reply brief, 15 pages.
43 (2) *Type-Volume Limitation*.

44 (A) The appellant's principal brief or the
45 appellant's response and reply brief is acceptable if:
46 (i) it contains no more than 14,000
47 words; or
48 (ii) it uses a monospaced face and
49 contains no more than 1,300 lines of text.
50 (B) The appellee's principal and response
51 brief is acceptable if:
52 (i) it contains no more than 16,500
53 words; or
54 (ii) it uses a monospaced face and
55 contains no more than 1,500 lines of text.
56 (C) The appellee's reply brief is acceptable
57 if it contains no more than half of the type volume
58 specified in subparagraph (A).
59 | (D) Headings, footnotes, and quotations
60 | count toward the word and line limitations. The
61 | corporate disclosure statement, table of contents,
62 | table of citations, statement with respect to oral
63 | argument, any addendum containing statutes, rules,
64 | or regulations, and any certificates of counsel do not
65 | count toward the limitation.

66 (3) *Certificate of Compliance*. A brief submitted

67 either electronically or in paper form under paragraph (2)

68 must comply with Rule 8015(a)(7)(C).

69 (e) TIME TO SERVE AND FILE A BRIEF. Briefs must

70 be served and filed as follows, unless the district court or BAP by

71 order in a particular case excuses the filing of briefs or specifies

72 different time limits:

73 (1) the appellant's principal brief, within 30 days

74 after the docketing of notice that the record has been

75 transmitted or is available electronically;

76 (2) the appellee's principal and response brief,

77 within 30 days after the appellant's principal brief is

78 served;

79 (3) the appellant's response and reply brief, within

80 30 days after the appellee's principal and response brief is

81 served; and

82 (4) the appellee's reply brief, within 14 days after

83 the appellant's response and reply brief is served, but at

84 least 7 days before scheduled argument unless the district

85 court or BAP, for good cause, allows a later filing.

~~(f) FAILURE TO FILE ON TIME. If an appellant or appellee fails to file a principal brief on time, or within an extended time authorized by the district court or BAP, the appeal or cross-appeal may be dismissed. Unless the district court or~~

~~BAP orders otherwise, an appellee who fails to file a responsive brief will not be heard at oral argument on the appeal, and an appellant who fails to file a responsive brief will not be heard at oral argument on the cross-appeal.~~

COMMITTEE NOTE

This rule is derived from F.R.App.P. 28.1. It governs the timing, content, length, filing, and service of briefs in bankruptcy appeals in which there is a cross-appeal. The former Part VIII rules did not separately address the topic of cross-appeals.

Subdivision (b) prescribes which party is designated the appellant when there is a cross-appeal. Generally, the first to file a notice of appeal will be the appellant.

Subdivision (c) specifies the briefs that the appellant and the appellee may file. Because of the dual role of the parties to the appeal and cross-appeal, each party is permitted to file a principal brief and a response to the opposing party's brief, as well as a reply brief. For the appellee, the principal brief in the cross-appeal and the response in the appeal are combined into a single brief. The appellant, on the other hand, initially files a principal brief in the appeal and later files a response to the appellee's principal brief in the cross-appeal, along with a reply brief in the appeal. The final brief that may be filed is the appellee's reply brief in the cross-appeal.

Subdivision (d), which prescribes page limits for briefs, is adopted from F.R.App.P. 28.1(e). It applies to briefs that are filed electronically, as well as to those filed in paper form. Like Rule 8015(a)(7), it imposes limits measured by either the number of pages or the number of words or lines of text.

Subdivision (e) governs the time for filing briefs in cases in which there is a cross-appeal. It adapts the provisions of F.R.App.P. 28.1(f).

~~Subdivision (f) authorizes the dismissal of an appeal or cross-appeal if the appellant or cross-appellant fails to timely file a principal brief, and it denies oral argument to a party who fails to file a responsive brief unless the district court or BAP orders otherwise.~~

Rule 8017. Brief of an Amicus Curiae

1 (a) WHEN PERMITTED. The United States or its officer
2 or agency or a state may file an amicus-curiae brief without the
3 consent of the parties or leave of court. Any other amicus curiae
4 may file a brief only by leave of court or if the brief states that all
5 parties have consented to its filing. On its own motion, and with
6 notice to all parties to an appeal, the district court or BAP may
7 request a brief by an amicus curiae.
8 (b) MOTION FOR LEAVE TO FILE. The motion must
9 be accompanied by the proposed brief and state:
10 (1) the movant's interest; and
11 (2) the reason why an amicus brief is desirable and
12 why the matters asserted are relevant to the disposition of
13 the appeal.
14 (c) CONTENTS AND FORM. An amicus brief must
15 comply with Rule 8015. In addition to the requirements of Rule
16 8015, the cover must identify the party or parties supported and
17 indicate whether the brief supports affirmance or reversal. If an
18 amicus curiae is a corporation, the brief must include a disclosure
19 statement like that required of parties by Rule 8012. An amicus
20 brief need not comply with Rule 8014, but must include the
21 following:

22 (1) a table of contents, with page references;

23 (2) a table of authorities—cases (alphabetically

24 arranged), statutes, and other authorities—with references

25 to the pages of the brief where they are cited;

26 (3) a concise statement of the identity of the amicus

27 curiae, its interest in the case, and the source of its

28 authority to file;

29 (4) unless the amicus curiae is one listed in the first

30 sentence of subdivision (a), a statement that indicates

31 whether:

32 (A) a party's counsel authored the brief in

33 whole or in part;

34 (B) a party or a party's counsel contributed

35 money that was intended to fund preparing or

36 submitting the brief; and

37 (C) a person—other than the amicus curiae,

38 its members, or its counsel—contributed money that

39 was intended to fund preparing or submitting the

40 brief and, if so, identifies each such person;

41 (5) an argument, which may be preceded by a

42 summary and need not include a statement of the applicable

43 standard of review; and

44 (6) a certificate of compliance, if required by Rule
45 8015(a)(7)(C) or 8015(b).
46 (d) LENGTH. Except by the district court's or BAP's
47 permission, an amicus brief must be no more than one-half the
48 maximum length authorized by these rules for a party's principal
49 brief. If the court grants a party permission to file a longer brief,
50 that extension does not affect the length of an amicus brief.
51 (e) TIME FOR FILING. An amicus curiae must file its
52 brief, accompanied by a motion for filing when necessary, no later
53 than 7 days after the principal brief of the party being supported is
54 filed. An amicus curiae that does not support either party must file
55 its brief no later than 7 days after the appellant's principal brief is
56 filed. The district court or BAP may grant leave for later filing,
57 specifying the time within which an opposing party may answer.
58 (f) REPLY BRIEF. Except by the district court's or
59 BAP's permission, an amicus curiae may not file a reply brief.
60 (g) ORAL ARGUMENT. An amicus curiae may
61 participate in oral argument only with the district court's or BAP's
62 permission.

COMMITTEE NOTE

This rule is derived from F.R.App.P. 29. The former Part VIII rules did not address the participation by an amicus curiae in a bankruptcy appeal.

Subdivision (a) adopts the provisions of F.R.App.P. 29(a). In addition, it authorizes the district court or BAP on its own motion— with notice to the parties—to request the filing of a brief by an amicus curiae.

Subdivisions (b)-(g) adopt F.R.App.P. 29(b)-(g).

Rule 8018. Serving and Filing Briefs; Appendices

(a) TIME TO SERVE AND FILE A BRIEF. The following rules apply unless the district court or BAP by order in a particular case excuses the filing of briefs or specifies different time limits:

(1) The appellant must serve and file a brief within 30 days after the docketing of notice that the record has been transmitted or is available electronically.

(2) The appellee must serve and file a brief within 30 days after service of the appellant's brief.

(3) The appellant may serve and file a reply brief within 14 days after service of the appellee's brief, but a reply brief must be filed at least 7 days before scheduled argument unless the district court or BAP, for good cause, allows a later filing.

(4) If an appellant fails to file a brief on time or within an extended time authorized by the district court or BAP, ~~the appeal may be dismissed~~an appellee may move to dismiss the appeal or the appellate court, after notice, may dismiss the appeal on its own motion. An appellee who fails to file a brief will not be heard at oral argument unless the district court or BAP grants permission.

22 (b) DUTY TO SERVE AND FILE AN APPENDIX TO
23 THE BRIEF.
24 (1) *Appellant*. Subject to subdivision (e) and Rule
25 8009(d), the appellant must serve and file with its principal
26 brief excerpts of the record as an appendix. It must contain
27 the following:
28 (A) the relevant entries in the bankruptcy
29 docket;
30 (B) the complaint and answer, or other
31 equivalent filings;
32 (C) the judgment, order, or decree from
33 which the appeal is taken;
34 (D) any other orders, pleadings, jury
35 instructions, findings, conclusions, or opinions
36 relevant to the appeal;
37 (E) the notice of appeal; and
38 (F) any relevant transcript or portion of it.
39 (2) *Appellee*. The appellee may also serve and file
40 with its brief an appendix that contains material required to
41 be included by the appellant or relevant to the appeal or
42 cross-appeal, but omitted by the appellant.
43 (3) *Cross-Appellee*. The appellant as cross-

44 appellee may also serve and file with its response an
45 appendix that contains material relevant to matters raised
46 initially by the principal brief in the cross-appeal, but
47 omitted by the cross-appellant.
48 (c) FORMAT OF THE APPENDIX. The appendix must
49 begin with a table of contents identifying the page at which each
50 part begins. The relevant docket entries must follow the table of
51 contents. Other parts of the record must follow chronologically.
52 When pages from the transcript of proceedings are placed in the
53 appendix, the transcript page numbers must be shown in brackets
54 immediately before the included pages. Omissions in the text of
55 documents or of the transcript must be indicated by asterisks.
56 Immaterial formal matters (captions, subscriptions,
57 acknowledgments, and the like) should be omitted.
58 (d) EXHIBITS. Exhibits designated for inclusion in the
59 appendix may be reproduced in a separate volume or volumes,
60 suitably indexed.
61 (e) APPEAL ON THE ORIGINAL RECORD WITHOUT
62 AN APPENDIX. The district court or BAP may, either by rule for
63 all cases or classes of cases or by order in a particular case,
64 dispense with the appendix and permit an appeal to proceed on the
65 original record, with the submission of any relevant parts of the

66 record that the district court or BAP orders the parties to file.

COMMITTEE NOTE

This rule is derived from former Rule 8009 and F.R.App.P. 30 and 31. Like former Rule 8009, it addresses the timing of serving and filing briefs and appendices, as well as the content and format of appendices. Rule 8011 governs the methods of filing and serving briefs and appendices.

The rule retains the bankruptcy practice of permitting the appellee to file its own appendix, rather than requiring the appellant to include in its appendix matters designated by the appellee. Rule 8016 governs the timing of serving and filing briefs when a cross-appeal is taken. This rule's provisions about appendices apply to all appeals, including cross-appeals.

Subdivision (a) retains former Rule 8009's provision that allows the district court or BAP to dispense with briefing or to provide different time periods than this rule specifies. It increases some of the time periods for filing briefs from the periods prescribed by the former rule, while still retaining shorter time periods than some provided by F.R.App.P. 31(a). The time for filing the appellant's brief is increased from 14 to 30 days after the docketing of the notice of the transmission of the record or notice of the availability of the record. That triggering event is equivalent to docketing the appeal under former Rule 8007. Appellate Rule 31(a)(1), by contrast, provides the appellant 40 days after the record is filed to file its brief. The shorter time period for bankruptcy appeals reflects the frequent need for greater expedition in the resolution of bankruptcy appeals, while still providing the appellant more time to prepare its brief than the former rule provided.

Subdivision (a)(2) similarly expands the time period for filing the appellee's brief from 14 to 30 days after the service of the appellant's brief. This period is the same as F.R. App. 31(a)(1) provides.

Subdivision (a)(3) retains the 14-day time period for filing a reply brief that the former rule prescribed, but it qualifies that period to ensure that the final brief is filed at least 7 days before oral argument.

If a district court or BAP has a mediation procedure for bankruptcy appeals, that procedure could affect when briefs must be filed. *See* Rule 8027.

Subdivision (a)(4) is new. Based on F.R.App.P. 31(c), it provides for actions that may be taken—dismissal of the appeal or denial of participation in oral argument—if the appellant or appellee fails to file its brief.

Subdivisions (b) and (c) govern the content and format of the appendix to a brief. Subdivision (b) is similar to former Rule 8009(b), and subdivision (c) is derived from F.R.App.P. 30(d).

Subdivision (d), which addresses the inclusion of exhibits in the appendix, is derived from F.R.App.P. 30(e).

Rule 8019. Oral Argument

1 (a) PARTY'S STATEMENT. Any party may file, or a
2 district court or BAP may require, a statement explaining why oral
3 argument should, or need not, be permitted.
4 (b) PRESUMPTION OF ORAL ARGUMENT AND
5 EXCEPTIONS. Oral argument must be allowed in every case
6 unless the district judge—or all the BAP judges assigned to hear
7 the appeal—examine the briefs and record and determine that oral
8 argument is unnecessary because
9 (1) the appeal is frivolous;
10 (2) the dispositive issue or issues have been
11 authoritatively decided; or
12 (3) the facts and legal arguments are adequately
13 presented in the briefs and record, and the decisional
14 process would not be significantly aided by oral argument.
15 (c) NOTICE OF ARGUMENT; POSTPONEMENT. The
16 district court or BAP must advise all parties of the date, time, and
17 place for oral argument, and the time allowed for each side. A
18 motion to postpone the argument or to allow longer argument must
19 be filed reasonably in advance of the hearing date.
20 (d) ORDER AND CONTENTS OF ARGUMENT. The
21 appellant opens and concludes the argument. Counsel must not

22 read at length from briefs, the record, or authorities.

23 (e) CROSS-APPEALS AND SEPARATE APPEALS. If

24 there is a cross-appeal, Rule 8016(b) determines which party is the

25 appellant and which is the appellee for the purposes of oral

26 argument. Unless the district court or BAP directs otherwise, a

27 cross-appeal or separate appeal must be argued when the initial

28 appeal is argued. Separate parties should avoid duplicative

29 argument.

30 (f) NONAPPEARANCE OF A PARTY. If the appellee

31 fails to appear for argument, the district court or BAP may hear the

32 appellant's argument. If the appellant fails to appear for argument,

33 the district court or BAP may hear the appellee's argument. If

34 neither party appears, the case will be decided on the briefs unless

35 the district court or BAP orders otherwise.

36 (g) SUBMISSION ON BRIEFS. The parties may agree to

37 submit a case for decision on the briefs, but the district court or

38 BAP may direct that the case be argued.

39 (h) USE OF PHYSICAL EXHIBITS AT ARGUMENT;

40 REMOVAL. Counsel intending to use physical exhibits other than

41 documents at the argument must arrange to place them in the

42 courtroom on the day of the argument before the court convenes.

43 After the argument, counsel must remove the exhibits from the

44 courtroom unless the district court or BAP directs otherwise. The

45 clerk may destroy or dispose of the exhibits if counsel does not

46 reclaim them within a reasonable time after the clerk gives notice

47 to remove them.

COMMITTEE NOTE

This rule generally retains the provisions of former Rule 8012 and adds much of the additional detail of F.R.App.P. 34. By incorporating the more detailed provisions of the appellate rule, Rule 8019 promotes national uniformity regarding oral argument in bankruptcy appeals.

Subdivision (a), like F.R.App.P. 34(a)(1), now allows a party to submit a statement explaining why oral argument is or is not needed. It also authorizes a court to require this statement. Former Rule 8012 only authorized statements explaining why oral argument should be allowed.

Subdivision (b) retains the reasons set forth in former Rule 8012 for the district court or BAP to conclude that oral argument is not needed.

The remainder of this rule adopts the provisions of F.R.App.P. 34(b)-(g), with one exception. Rather than requiring the district court or BAP to hear appellant's argument if the appellee does not appear, subdivision (e) authorizes the district court or BAP to go forward with the argument in the appellee's absence. Should the court decide, however, to postpone the oral argument in that situation, it would be authorized to do so.

Rule 8020. Frivolous Appeal and Other Misconduct

1 (a) FRIVOLOUS APPEAL—DAMAGES AND COSTS.
2 If the district court or BAP determines that an appeal is frivolous,
3 it may, after a separately filed motion or notice from the court and
4 reasonable opportunity to respond, award just damages and single
5 or double costs to the appellee.
6 (b) OTHER MISCONDUCT. The district court or BAP
7 may discipline or sanction an attorney or party appearing before it
8 for other misconduct, including failure to comply with any court
9 order. First, however, the court must afford the attorney or party
10 reasonable notice, an opportunity to show cause to the contrary,
11 and, if requested, a hearing.

COMMITTEE NOTE

This rule is derived from former Rule 8020 and F.R.App.P. 38 and 46(c). Subdivision (a) permits an award of damages and costs to an appellee for a frivolous appeal. Subdivision (b) permits the district court or BAP to impose on parties as well as their counsel sanctions for misconduct other than taking a frivolous appeal. Failure to comply with a court order, for which sanctions may be imposed, may include a failure to comply with a local court rule.

Rule 8021. Costs

1 (a) AGAINST WHOM ASSESSED. The following rules
2 apply unless the law provides or the district court or BAP orders
3 otherwise:
4 (1) if an appeal is dismissed, costs are taxed against
5 the appellant, unless the parties agree otherwise;
6 (2) if a judgment, order, or decree is affirmed, costs
7 are taxed against the appellant;
8 (3) if a judgment, order, or decree is reversed, costs
9 are taxed against the appellee;
10 (4) if a judgment, order, or decree is affirmed or
11 reversed in part, modified, or vacated, costs are taxed only
12 as the district court or BAP orders.
13 (b) COSTS FOR AND AGAINST THE UNITED
14 STATES. Costs for or against the United States, its agency, or its
15 officer may be assessed under subdivision (a) only if authorized
16 by law.
17 (c) COSTS ON APPEAL TAXABLE IN THE
18 BANKRUPTCY COURT. The following costs on appeal are
19 taxable in the bankruptcy court for the benefit of the party entitled
20 to costs under this rule:
21 (1) the production of any required copies of a brief,

22 appendix, exhibit, or the record;

23 (2) the preparation and transmission of the record;

24 (3) the reporter's transcript, if needed to determine

25 the appeal;

26 (4) premiums paid for a supersedeas bond or other

27 bonds to preserve rights pending appeal; and

28 (5) the fee for filing the notice of appeal.

29 (d) BILL OF COSTS; OBJECTIONS. A party who wants

30 costs taxed must, within 14 days after entry of judgment on appeal,

31 file with the bankruptcy clerk, with proof of service, an itemized

32 and verified bill of costs. Objections must be filed within 14 days

33 after service of the bill of costs, unless the bankruptcy court

34 extends the time.

COMMITTEE NOTE

This rule is derived from former Rule 8014 and F.R.App.P. 39. It retains the former rule's authorization for taxing appellate costs against the losing party and its specification of the costs that may be taxed. The rule also incorporates some of the additional details regarding the taxing of costs contained in F.R.App.P. 39. Consistent with former Rule 8014, the bankruptcy clerk has the responsibility for taxing all costs. Subdivision (b), derived from F.R.App.P. 39(b), clarifies that additional authority is required for the taxation of costs by or against federal governmental parties.

Rule 8022. Motion for Rehearing.

1 (a) TIME TO FILE; CONTENTS; RESPONSE; ACTION
2 BY THE DISTRICT COURT OR BAP IF GRANTED.
3 (1) *Time.* Unless the time is shortened or extended
4 by order or local rule, any motion for rehearing by the
5 district court or BAP must be filed within 14 days after
6 entry of judgment on appeal.
7 (2) *Contents.* The motion must state with
8 particularity each point of law or fact that the movant
9 believes the district court or BAP has overlooked or
10 misapprehended and must argue in support of the motion.
11 Oral argument is not permitted.
12 (3) *Response.* Unless the district court or BAP
13 requests, no response to a motion for rehearing is
14 permitted. But ordinarily, rehearing will not be granted in
15 the absence of such a request.
16 (4) *Action by the District Court or BAP.* If a
17 motion for rehearing is granted, the district court or BAP
18 may do any of the following:
19 (A) make a final disposition of the appeal
20 without reargument;
21 (B) restore the case to the calendar for

22 reargument or resubmission; or

23 (C) issue any other appropriate order.

24 (b) FORM OF THE MOTION; LENGTH. The motion

25 must comply in form with Rule 8013(f)(1) and (2). Copies must

26 be served and filed as provided by Rule 8011. Unless the district

27 court or BAP by local rule or order provides otherwise, a motion

28 for rehearing must not exceed 15 pages.

COMMITTEE NOTE

This rule is derived from former Rule 8015 and F.R.App.P. 40. It deletes the provision of former Rule 8015 regarding the time for appeal to the court of appeals because the matter is addressed by F.R.App.P. 6(b)(2)(A).

Rule 8023. Voluntary Dismissal

1 The clerk of the district court or BAP must dismiss an
2 appeal if the parties file a signed dismissal agreement specifying
3 how costs are to be paid and pay any fees that are due. An appeal
4 may be dismissed on the appellant's motion on terms agreed to by
5 the parties or fixed by the district court or BAP.

COMMITTEE NOTE

This rule is derived from former Rule 8001(c) and F.R.App.P. 42. The provision of the former rule regarding dismissal of appeals in the bankruptcy court prior to docketing of the appeal has been deleted. Now that docketing occurs promptly after a notice of appeal is filed, *see* Rules 8003(d) and 8004(c), an appeal likely will not be voluntarily dismissed before docketing.

The rule retains the provision of the former rule that the district or BAP clerk must dismiss an appeal upon the parties' agreement. District courts and BAPs continue to have discretion to dismiss an appeal on an appellant's motion. Nothing in the rule prohibits a district court or BAP from dismissing an appeal for other reasons authorized by law, such as the failure to prosecute an appeal.

Rule 8024. Clerk's Duties on Disposition of the Appeal

1 (a) JUDGMENT ON APPEAL. The district or BAP clerk
2 must prepare, sign, and enter the judgment after receiving the
3 court's opinion or, if there is no opinion, as the court instructs.
4 Noting the judgment on the docket constitutes entry of judgment.
5 (b) NOTICE OF A JUDGMENT. Immediately upon the
6 entry of a judgment, the district or BAP clerk must:
7 (1) transmit a notice of the entry to each party to
8 the appeal, to the United States trustee, and to the
9 bankruptcy clerk, together with a copy of any opinion; and
10 (2) note the date of the transmission on the docket.
11 (c) RETURNING ~~ORIGINAL DOCUMENTS~~PHYSICAL |
12 ITEMS. If any ~~original documents~~physical items were transmitted |
13 as the record on appeal, they must be returned to the bankruptcy
14 clerk on disposition of the appeal.

COMMITTEE NOTE

This rule is derived from former Rule 8016, which was adapted from F.R.App.P. 36 and 45(c) and (d). The rule is reworded to reflect that only items in the record ~~often will not be~~that are physically, as opposed to electronically, transmitted to the district court or BAP ~~and thus there will~~need to be~~ no documents to~~ returned to the bankruptcy clerk. Other changes to the former rule are stylistic.

Rule 8025. Stay of a District Court or BAP Judgment

1 (a) AUTOMATIC STAY OF JUDGMENT ON APPEAL.
2 Unless the district court or BAP orders otherwise, its judgment is
3 stayed for 14 days after entry.
4 (b) STAY PENDING APPEAL TO THE COURT OF
5 APPEALS.
6 (1) *In General*. On a party's motion and notice to
7 all other parties to the appeal, the district court or BAP may
8 stay its judgment pending an appeal to the court of appeals.
9 (2) *Time Limit*. The stay must not exceed 30 days
10 after the judgment is entered, except for cause shown.
11 (3) *Stay Continued*. If, before a stay expires, the
12 party who obtained the stay appeals to the court of appeals,
13 the stay continues until final disposition by the court of
14 appeals.
15 (4) *Bond or Other Security*. A bond or other
16 security may be required as a condition for granting or
17 continuing a stay of the judgment. A bond or other security
18 may be required if a trustee obtains a stay, but not if a stay
19 is obtained by the United States or its officer or agency or
20 at the direction of any department of the United States
21 government.

22 (c) AUTOMATIC STAY OF AN ORDER, JUDGMENT,
23 OR DECREE OF A BANKRUPTCY COURT. If the district court
24 or BAP enters a judgment affirming an order, judgment, or decree
25 of the bankruptcy court, a stay of the district court's or BAP's
26 judgment automatically stays the bankruptcy court's order,
27 judgment, or decree for the duration of the appellate stay.
28 (d) POWER OF A COURT OF APPEALS NOT
29 LIMITED. This rule does not limit the power of a court of appeals
30 or any of its judges to do the following:
31 (1) stay a judgment pending appeal;
32 (2) stay proceedings while an appeal is pending;
33 (3) suspend, modify, restore, vacate, or grant a stay
34 or an injunction while an appeal is pending; or
35 (4) issue any order appropriate to preserve the
36 status quo or the effectiveness of any judgment to be
37 entered.

COMMITTEE NOTE

This rule is derived from former Rule 8017. Most of the changes to the former rule are stylistic. Subdivision (c) is new. It provides that if a district court or BAP affirms the bankruptcy court ruling and the appellate judgment is stayed, the bankruptcy court's order, judgment, or decree that is affirmed on appeal is automatically stayed to the same extent as the stay of the appellate judgment.

Rule 8026. Rules by Circuit Councils and District Courts; Procedure When There is No Controlling Law

1 (a) LOCAL RULES BY CIRCUIT COUNCILS AND
2 DISTRICT COURTS.
3 (1) *Adopting Local Rules*. A circuit council that
4 has authorized a BAP under 28 U.S.C. § 158(b) may make
5 and amend rules governing the practice and procedure on
6 appeal from a judgment, order, or decree of a bankruptcy
7 court to the BAP. A district court may make and amend
8 rules governing the practice and procedure on appeal from
9 a judgment, order, or decree of a bankruptcy court to the
10 district court. Local rules must be consistent with, but not
11 duplicative of, Acts of Congress and these Part VIII rules.
12 Rule 83 F.R.Civ.P. governs the procedure for making and
13 amending rules to govern appeals.
14 (2) *Numbering*. Local rules must conform to any
15 uniform numbering system prescribed by the Judicial
16 Conference of the United States.
17 (3) *Limitation on Imposing Requirements of Form*.
18 A local rule imposing a requirement of form must not be
19 enforced in a way that causes a party to lose any right
20 because of a nonwillful failure to comply.
21 (b) PROCEDURE WHEN THERE IS NO

22 CONTROLLING LAW.

23 (1) *In General*. A district court or BAP may

24 regulate practice in any manner consistent with federal law,

25 applicable federal rules, the Official Forms, and local rules.

26 (2) *Limitation on Sanctions*. No sanction or other

27 disadvantage may be imposed for noncompliance with any

28 requirement not in federal law, applicable federal rules, the

29 Official Forms, or local rules unless the alleged violator has

30 been furnished in the particular case with actual notice of

31 the requirement.

COMMITTEE NOTE

This rule is derived from former Rule 8018. The changes to the former rule are stylistic.

Rule 8027. Notice of a Mediation Procedure

1 If the district court or BAP has a mediation procedure
2 applicable to bankruptcy appeals, the clerk must notify the parties
3 promptly after docketing the appeal of:
4 (a) the requirements of the mediation procedure; and
5 (b) any effect the mediation procedure has on the time to
6 file briefs.

COMMITTEE NOTE

This rule is new. It requires the district or BAP clerk to advise the parties promptly after an appeal is docketed of any court mediation procedure that is applicable to bankruptcy appeals. The notice must state what the mediation requirements are and how the procedure affects the time for filing briefs.

Rule 8028. Suspension of Rules in Part VIII

1 In the interest of expediting decision or for other cause in a
2 particular case, the district court or BAP, or where appropriate the
3 court of appeals, may suspend the requirements or provisions of
4 the rules in Part VIII, except Rules 8001, 8002, 8003, 8004, 8005,
5 8006, 8007, 8012, 8020, 8024, 8025, 8026, and 8028.

COMMITTEE NOTE

This rule is derived from former Rule 8019 and F.R.App.P. 2. To promote uniformity of practice and compliance with statutory authority, the rule includes a more extensive list of requirements that may not be suspended than either the former rule or the Federal Rules of Appellate Procedure provide. Rules governing the following matters may not be suspended:

- scope of the rules; definition of "BAP"; method of transmission;
- time for filing a notice of appeal;
- taking an appeal as of right;
- taking an appeal by leave;
- election to have an appeal heard by a district court instead of a BAP;
- certification of direct appeal to a court of appeals;
- stay pending appeal;
- corporate disclosure statement;
- sanctions for frivolous appeals and other misconduct;
- clerk's duties on disposition of an appeal;
- stay of a district court's or BAP's judgment;
- local rules; and
- suspension of the Part VIII rules.