

*Via U.S. Mail*  
*Via E-Mail*

January 17, 2013

Committee on Rules of Practice and Procedure  
Administrative Office of the  
United States Courts  
Suite 7-240  
Washington, D.C. 20544  
e-mail: [rules\\_comments@ao.uscourts.gov](mailto:rules_comments@ao.uscourts.gov)

12-BK-011

**Re: Proposed Federal Rule of Bankruptcy Procedure 8002(c)**

Dear Committee:

We are the co-chairs of the Debtor/Creditor Rights Committee of the Business Law Section of the State Bar of Michigan and write to join on behalf of the Committee in the December 13, 2012 comment by our member Thomas R. Morris opposing the amendment of Federal Rule of Bankruptcy Procedure 8002 to add a new subsection (c) regarding inmate appeals (the “**Inmate Appeal Rule**”).

While conforming the practice of appeals from the bankruptcy court to the practice of appeals in the in district court is a worthy goal, the difference in the nature of bankruptcy cases and district court cases makes the proposed Inmate Appeal Rule unwise. In a district court action, there are only a limited number of parties to the district court action, all of whom are known, and whether an inmate is a party. Therefore no parties in a district court action would be surprised or prejudiced by extending the time to appeal for incarcerated inmates.

In contrast, bankruptcy is a collective proceeding in which any creditor or equity holder may participate, particularly in Chapter 11 cases. The active parties to a contested matter in a bankruptcy case may not know that a creditor or equity holder is an inmate, and therefore have no reason to believe bankruptcy orders are not final within 14 days after entry of the order because an inmate might be involved and desire to appeal. That the notice of appeal may not be received until days after the deadline applicable to all other parties has passed without an appeal this could defeat the expectations of the parties and harm an estate by delays.

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An alternative to not adding any Inmate Appeal Rule could be limiting the application of proposed Rule 8002(c) to incarcerated inmates who had previously opposed entry of the order from which the appeal is taken and disclosed the incarcerated inmate status.

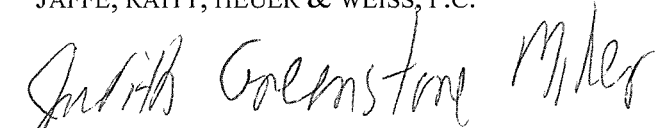
We oppose adoption of the Inmate Appeal Rule, but if an Inmate Appeal Rule is to be added to the Bankruptcy Rules, we request that it be limited, as described above, to apply only when the inmate had previously objected to entry of the order and given notice of inmate status.

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

  
Judy B. Calton, co-chair

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Judith Greenstone Miller, co-chair

**Calton, Judy B.**

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**From:** Thomas R. Morris <Morris@SilvermanMorris.com>  
**Sent:** Thursday, December 13, 2012 1:12 PM  
**To:** rules\_comments@ao.uscourts.gov  
**Subject:** Comment on proposed amendment to Federal Rule of Bankruptcy Procedure 8002.

Distinguished members of the Committee on Rules of Practice and Procedure:

The proposed amendment to Rule 8002, in the form of a new subsection (c) to that rule, calls for the “prisoner mailbox rule” to apply to any appeal from a bankruptcy court order. The application of that rule should instead be made subject to the exceptions provided for in present Rule 8002(c)(2) / proposed Rule 8002(d)(2). Rule 8002(c)(2) currently excludes certain types of bankruptcy court orders from being subject to an extension of time for the filing of an appeal. This exclusion helps to ensure the finality of certain types of orders of bankruptcy courts, such as an order confirming a plan or an order approving the sale of property. These are orders upon which transactions, ranging in size from a consumer loan to the sale of the assets of General Motors, often rely. Certainty in those types of transactions is essential to our system of law. Were the “prisoner mailbox rule” to be adopted without this exclusion, a transaction which relies upon the finality of a bankruptcy court order could be held hostage to the possibility of a prisoner appeal, or thrown into uncertainty when a prisoner appeal becomes known after the expiration of the ordinary appeal period.

The “prisoner mailbox rule”, which treats an appeal by a prison inmate as “filed” upon the prisoner’s deposit of a notice of appeal in the prison mail, originated with the case of a prisoner who was unable to timely appeal his conviction due to the fact of his incarceration. The rule was incorporated in 1993 into FRAP 4 so as to apply to any appeal from an order of a district court. This procedural rights of prisoners, and consistency between the FRBP and the FRAP are the impetus behind the proposed new Rule 8002(c). These are both important considerations. However, because of the high incidence of transactional reliance upon certain types of bankruptcy court orders, the considerations favoring the extension of the “prisoner mailbox rule” to bankruptcy court orders must be balanced with the need for certainty in certain bankruptcy matters. That balance will be found by the application of the present Rule 8002(c)(2) exceptions to the proposed new “bankruptcy prisoner mailbox rule”.

Thank you for your consideration of my comments.

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**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 docketed 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.