

**RULES
OF THE
UNITED STATES
BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

PREAMBLE

These rules of the United States Bankruptcy Appellate Panel of the Ninth Circuit are promulgated under the authority of Federal Rule of Bankruptcy Procedure 8018.

Adopted, as Revised: February 24, 2000

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**8001(a)-1
NOTICE OF APPEAL**

ORDER BEING APPEALED. The appellant shall attach to the notice of appeal filed in bankruptcy court a copy of the entered judgment, order or decree from which the appeal was taken. The clerk of the bankruptcy court shall forward these items to the BAP Clerk. If the notice of appeal is filed before entry of the order being appealed, it is appellant's duty to forward to the BAP Clerk a copy of the judgment or order immediately upon entry.

**8001(e)-1
ELECTION TO TRANSFER APPEAL TO DISTRICT COURT**

(a) TRANSFER. The Panel may transfer an appeal to the district court to further the interests of justice, such as when a timely statement of election has been filed in a related appeal, or for any other reason the Panel deems appropriate.

(b) ELECTION PROCEDURE WHEN MOTION FOR LEAVE TO APPEAL IS PENDING. If appellant moves for leave to appeal pursuant to FRBP 8003, and fails to file a separate notice of appeal concurrently with filing the motion for leave, the motion for leave shall be treated as if it were a notice of appeal for purposes of calculating the time period for filing an election.

**8006-1
TRANSCRIPTS**

The excerpts of the record shall include the transcripts necessary for adequate review in light of the standard of review to be applied to the issues before the Panel. The Panel is required to consider only those portions of the transcript included in the excerpts of the record. Parties shall consult local bankruptcy rules with regard to the proper procedure for ordering transcripts or for indicating that transcripts are not necessary.

Explanatory Note:

This rule addresses two problems. The first occurs when appellants challenge the oral tentative rulings, and/or the oral findings of fact and conclusions of law of the bankruptcy court, and do not include sufficient transcripts in the excerpts of the record to allow the Panel to properly review the bankruptcy court's decision. If findings of fact and conclusions of law were made orally on the record,

a transcript of those findings is mandatory. *In re McCarthy*, 230 B.R. 414, 416 (9th Cir. BAP 1999).

The second problem arises when an appellant challenges a factual finding. In order to review a factual finding for clear error, the record should usually include the entire transcript and all other relevant evidence considered by the bankruptcy court. See *In Re Friedman*, 126 B.R. 63, 68 (9th Cir. BAP 1991) (failure to provide an adequate record may be grounds for affirmance); *In re Burkhardt*, 84 B.R. 658 (9th Cir. BAP 1988).

8007(b)-1

DOCKETING APPEAL AND APPELLATE RECORD

As soon as the statement of issues, designation of record, and any transcripts that have been designated are filed with bankruptcy court, the clerk of the bankruptcy court shall transmit to the BAP Clerk a certificate that the record is complete. The BAP Clerk shall forthwith notify the parties of the date the certificate is filed at the BAP, and this date shall constitute the date of entry of the appeal on the docket for purposes of FRBP 8009. The record shall be retained by the clerk of the bankruptcy court. The BAP Clerk may request a copy of the record from the clerk of the bankruptcy court.

8008(a)-1

COMMUNICATIONS

All communications to the BAP shall be addressed to the Clerk of the United States Bankruptcy Appellate Panel of the Ninth Circuit, Richard H. Chambers Court of Appeals Building, 125 South Grand Avenue, Pasadena, California 91105.

8008(a)-3

FAX FILING

The BAP does not accept for filing documents transmitted by telephone facsimile machine ("fax"), except in emergency circumstances. Permission of the BAP Clerk, prior to the transmittal of the document, is always required.

Any document transmitted to the BAP by fax must be served on all other parties by fax or hand delivery, unless another form of service is authorized by the BAP Clerk, and the method of service shall be expressly stated on the proof of service. Within three days

after the fax transmittal, the filing party shall file a signed original and the necessary copies with the BAP.

8009(a)-1

BRIEFS; NUMBER OF COPIES; EXTENSIONS OF TIME

(a) **Number.** A party filing briefs shall file an original and four (4) copies with covers, bound separately from the excerpts of the record. At the direction of the BAP the parties may be required to provide additional copies.

(b) **Motion for Extension of Time for Filing Brief.**

(1) **Requirements.** A motion for extension of time to file a brief shall be filed within the time limit prescribed by these rules for the filing of such brief and shall be accompanied by a proof of service. The motion shall be supported by a declaration stating:

- (A) When the brief was initially due;
- (B) How many extensions of time, if any, have been granted;
- (C) Reasons why this extension is necessary;
- (D) The specific amount of time requested; and
- (E) The position of the opponent(s) with respect to the motion or why the moving party has been unable to obtain a statement of such position(s).

(2) **BAP Clerk Authority.** The BAP Clerk is authorized to grant extensions of time under the direction and guidelines of the Panel.

(3) **Consequences.** Appellant's failure to file a brief timely may result in the dismissal of the appeal. A brief received after the due date will not be accepted for filing unless it is accompanied by a motion for an extension of time and the motion is granted. The Panel has no obligation to consider a late brief. Sanctions may be imposed, such as the waiver of oral argument, monetary sanctions or dismissal.

8009(b)-1

APPENDIX (EXCERPTS OF THE RECORD)

(a) **Number and Form.** A party filing excerpts of the record shall file an original and four (4) copies bound separately from the briefs.

- (1) Each copy shall be reproduced on white paper by any duplicating process capable of producing a clearly legible image.
- (2) Each copy shall be bound with a white cover.
- (3) The cover of the excerpts shall contain the caption information specified by 9th Cir. BAP Rule 8010(a)-1(a)(2).

(b) Organization of Appendix.

- (1) Documents in the appendix shall be divided by tabs.
- (2) The pages of the excerpts shall be continuously paginated.
- (3) The appendix shall contain a complete table of contents listing the documents and identifying both the tab and page number where each document is located. If the appendix has more than one volume, the table of contents shall also identify the volume in which each document is located.

Explanatory Note:

The Panel generally limits its review to an examination of the excerpts of the record as provided by the parties. The Panel is not obligated to examine portions of the record not included in the excerpts. See In re Knit, 190 B.R. 382, 386-87 (9th Cir. BAP 1995); In re Anderson, 69 B.R. 105, 109 (9th Cir. BAP 1986).

The parties are further referred to FRBP 8010 (a)(1)(D) and (a)(2) which address the related problem created by appellants who do not make explicit references to the parts of the record that support their factual allegations and arguments. Opposing parties and the court are not obliged to search the entire record unaided for error. See Dela Rosa v. Scottsdale Memorial Health Systems, Inc., 136 F.3d 1241 (9th Cir. 1998); Symcom Capital Corp. v. Wade, 924 F.2d 167, 169 (9th Cir. 1991); FRAP Rule 10(b)(2).

8010(a)-1

FORM OF BRIEFS AND CERTIFICATION REQUIREMENTS

(a) Form. Briefs shall be produced by a standard typographic printing process that produces a clear black image on white paper, 8 ½ inches by 11 inches, with one-inch margins, in at least 14 point proportional type, or 10.5 point monospaced type, double-spaced, on opaque, unglazed paper.

- (1) BRIEF COVER COLORS:
Appellant's opening brief: BLUE
Appellee's opening brief: RED
Appellant's reply brief: GREY

- (2) COVER INFORMATION:
Name of court
Case numbers (BAP, bankruptcy court case, and if applicable, adversary numbers)
Name of Debtor
Names of appellant(s) and appellee(s)
Title of document
Name, address, telephone number, and bar number of counsel filing document

(b) Certification as to Interested Parties. To enable the judges of a Panel to evaluate possible disqualification or recusal, all parties, other than governmental parties, shall attach to the inside back cover of their initial briefs, a list of all persons, associations of persons, firms, partnerships and corporations that have an interest in the outcome of the case. The certification should be in substantially the following form:

Certification Required by BAP Rule 8010(a)-1(b)

[BAP NUMBER, DEBTOR'S NAME]

The undersigned certifies that the following parties have an interest in the outcome of this appeal. These representations are made to enable judges of the Panel to evaluate possible disqualification or recusal [list the names of all such parties and identify their connection and interest]:

Signed _____

Dated _____

(c) **Certification of Related Cases.** The appellant shall attach to the inside back cover of each copy of the opening brief a statement of all known related cases and appeals before the United States Court of Appeals, the United States District Court, or the BAP. A related case is defined as one which involves substantially the same litigants, substantially the same factual pattern or legal issues, or arises from a case previously heard by the Panel. The certification should be in substantially the following form:

Certification Required by BAP Rule 8010(a)-1(c)

[BAP NUMBER, DEBTOR'S NAME]

The undersigned certifies that the following are known related cases and appeals [list the case name, court and status of all related cases and appeals]:

Signed _____

Dated _____

Explanatory Note:

Failure to comply with the Briefing Rules may result in striking the brief and dismissing the appeal, N/S Corp., v. Liberty Mutual Ins. Co., 127 F.3d 1145 (9th Cir. 1997), or imposing sanctions; In re MacIntyre, 181 B.R. 420, 422 (9th Cir. BAP 1995), aff'd, 77 F.3d 489 (9th Cir. 1996).

Briefs and excerpts of the record shall be securely fastened by any appropriate means.

**8010(c)-1
LENGTH OF BRIEFS**

Except with leave of the Panel, appellant's and appellee's initial briefs shall not exceed thirty (30) pages, and reply briefs shall not exceed twenty (20) pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations or similar materials.

Explanatory Note:

Motions for leave to exceed page limitations are rarely granted. Motions should be filed well in advance of the due date for the brief.

8011(d)-1

EMERGENCY MOTIONS

(a) **Form and Number.** An emergency motion must have a cover page bearing the legend "Emergency Motion" in large, bold type. The motion must be filed with the BAP Clerk in an original and three copies.

(b) **Contents.** The motion and supporting declaration(s) must set forth the facts showing the existence and nature of the alleged immediate and irreparable harm.

(c) **Appendix.** The emergency motion must be accompanied by an appendix containing:

- (1) A conformed copy of the notice of appeal, and
- (2) A copy of the entered judgment, order or decree from which the appeal was taken;
- (3) If the emergency motion concerns a stay pending appeal, the appendix must also contain:
 - (i) a conformed copy of the court's order denying or granting the stay and any explanation by the court of its ruling, or a declaration explaining why such a copy is unavailable; and
 - (ii) copies of all papers regarding the stay filed in bankruptcy court.

(d) **Service.** The motion and appendix must be accompanied by a proof of service showing service on all parties.

Explanatory Note:

When the emergency motion concerns a stay pending appeal, the parties are directed to In re Wymer, 5 B.R. 802, 805-07 (9th Cir. BAP 1990), for standards in granting a stay pending appeal.

8011(e)-1

DELEGATION OF AUTHORITY TO ACT ON MOTIONS

The BAP judges may delegate to the BAP Clerk authority to act on motions that are subject to disposition by a single judge pursuant to FRBP 8011(e), upon the condition that the order entered on the motion does not dispose of the appeal or resolve a motion for stay pending appeal. The order disposing of the motion is subject to reconsideration by a judge if a written request for judicial review is received within ten (10) days of the entry of the order.

8012-1
ORAL ARGUMENT

The BAP Clerk will provide notice of the time and place of argument. Once the hearing date is scheduled, a motion for continuance will be granted only under exceptional circumstances.

The Panel may determine that oral argument is not needed either *sua sponte* or on motion for submission of the appeal on the briefs. If the Panel determines that oral argument is not needed, it will issue an order to that effect.

Rule 8013-1
DISPOSITION OF APPEAL

(a) **OPINION or MEMORANDUM.** The Panel may determine that a written disposition of a matter before the Panel will be designated an **OPINION** if it:

- (1) Establishes, alters, modifies or clarifies a rule of law;
- (2) Calls attention to a rule of law which appears to have been generally overlooked;
- (3) Criticizes existing law; or
- (4) Involves a legal or factual issue of unique interest or substantial public importance.

A written disposition of a case not designated for publication will be captioned a **MEMORANDUM**.

(b) **PUBLICATION.** Publication of a final disposition means the BAP Clerk will release a copy to recognized channels for dissemination. Only opinions, and orders designated for publication by the Panel, will be published.

(c) **CITATION.** Unpublished memoranda and orders have no precedential value and may not be cited except when relevant under the doctrines of law of the case, *res judicata*, or collateral estoppel.

(d) **REQUEST FOR PUBLICATION.** Any party may request, by letter, that the Panel publish a memorandum. The request must be received no later than 30 days after the filing of the memorandum and must state concisely the reasons for publication.

**8014-1
COSTS**

Costs under FRBP 8014 are taxed by filing a bill of costs with the clerk of the bankruptcy court.

**8018(b)-1
SILENCE OF LOCAL RULES**

In cases where Part VIII of the Federal Rules of Bankruptcy Procedure and these rules are silent as to a particular matter of practice, a Panel may apply the Rules of the United States Court of Appeals for the Ninth Circuit and the Federal Rules of Appellate Procedure.

**8018-2
CITATION TO RULES**

These rules shall be cited as:

"9th Cir. BAP R. _____"

**8070-1
DISMISSAL FOR FAILURE TO PROSECUTE**

When an appellant fails to file an opening brief timely, or otherwise fails to comply with rules or orders regarding processing the appeal, the BAP Clerk, after notice, may enter an order dismissing the appeal. The order dismissing the appeal is subject to reconsideration by the Panel if a written request for judicial review is received within ten (10) days of the entry of the order.

Rule 9001-1
DEFINITIONS

- (a) The words "BAP Clerk" as used in these rules mean the Clerk of the United States Bankruptcy Appellate Panel of the Ninth Circuit.
- (b) The word "Judge" as used in these rules, unless otherwise designated, means a member of the United States Bankruptcy Appellate Panel of the Ninth Circuit.
- (c) The word "Panel" as used in these rules means a panel of the judges of the United States Bankruptcy Appellate Panel of the Ninth Circuit.
- (d) The acronym "BAP" as used in these rules means United States Bankruptcy Appellate Panel of the Ninth Circuit.
- (e) The acronym "FRBP" as used in these rules means Federal Rules of Bankruptcy Procedure.
- (f) The acronym "FRAP" as used in these rules means Federal Rules of Appellate Procedure.

9010-1
ATTORNEYS—Duties, Withdrawal, Substitution

- (a) **DUTIES.** Counsel must ensure that the appeal is perfected on behalf of the represented party in a manner and within the times prescribed in these rules and must prosecute the appeal with diligence. Counsel must provide counsel's name, bar number, address, and telephone number on all documents filed with the BAP. Changes in address of counsel or client must be reported to the BAP Clerk in writing.
- (b) **ADMISSION.** Any attorney admitted to practice before a District Court of the Ninth Circuit or the Court of Appeals for the Ninth Circuit and who is in good standing before such court shall be deemed admitted to practice before the BAP. An attorney not so admitted may apply to the BAP for permission to appear in a particular appeal.
- (c) **WITHDRAWAL AND SUBSTITUTION.** No attorney who has appeared in an appeal before the BAP may withdraw without either:
 - (1) Filing and serving a Notice of Substitution of Attorney. The notice shall contain substitute counsel's name, bar number, address, telephone number and signature; or
 - (2) Obtaining an order of the BAP allowing the attorney to withdraw. The BAP may grant such an order if an attorney files and serves on opposing counsel and the attorney's client a motion to withdraw as counsel. Any motion to withdraw shall include the client's current address and telephone number.

(d) **NOTICE OF APPEARANCE.** Immediately upon undertaking the representation, any attorney who represents a party in an appeal, and who is not identified in either the notice of appeal or a notice of substitution of attorney, shall file and serve a notice of appearance containing counsel's name, bar number, address, and telephone number.

**9010-2
PRO SE PARTIES**

Parties unrepresented by counsel and appearing before the Panel are considered to be "pro se parties" representing themselves. Only individuals are permitted to appear pro se. Pro se parties must ensure their appeal is perfected in a manner and within the time limits prescribed in these rules and must prosecute the appeal with diligence. Changes in address must be reported to the BAP Clerk in writing.

Explanatory Note:

See In re Rainbow Magazine, Inc., 77 F.3d 278 (9th Cir. 1996); In re Eisen, 14 F.3d 469, 471 (9th Cir. 1994). Corporations, partnerships and associations are not permitted to appear in federal court except through a licensed attorney. Rowland v. California Men's Colony, 506 U.S. 194 (1993); In re America West Airlines, Inc., 40 F.3d 1058 (9th Cir. 1994).