

ner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

Rule 8003. Leave to Appeal

(a) **CONTENT OF MOTION; ANSWER.** A motion for leave to appeal under 28 U.S.C. § 158(a) shall contain: (1) a statement of the facts necessary to an understanding of the questions to be presented by the appeal; (2) a statement of those questions and of the relief sought; (3) a statement of the reasons why an appeal should be granted; and (4) a copy of the judgment, order, or decree complained of and of any opinion or memorandum relating thereto. Within 14 days after service of the motion, an adverse party may file with the clerk an answer in opposition.

(b) **TRANSMITTAL; DETERMINATION OF MOTION.** The clerk shall transmit the notice of appeal, the motion for leave to appeal and any answer thereto to the clerk of the district court or the clerk of the bankruptcy appellate panel as soon as all parties have filed answers or the time for filing an answer has expired. The motion and answer shall be submitted without oral argument unless otherwise ordered.

(c) **APPEAL IMPROPERLY TAKEN REGARDED AS A MOTION FOR LEAVE TO APPEAL.** If a required motion for leave to appeal is not filed, but a notice of appeal is timely filed, the district court or bankruptcy appellate panel may grant leave to appeal or direct that a motion for leave to appeal be filed. The district court or the bankruptcy appellate panel may also deny leave to appeal but in so doing shall consider the notice of appeal as a motion for leave to appeal. Unless an order directing that a motion for leave to appeal be filed provides otherwise, the motion shall be filed within 14 days of entry of the order.

(d) **REQUIREMENT OF LEAVE TO APPEAL.** If leave to appeal is required by 28 U.S.C. § 158(a) and has not earlier been granted, the authorization of a direct appeal by a court of appeals under 28 U.S.C. § 158(d)(2) shall be deemed to satisfy the requirement for leave to appeal.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 23, 2008, eff. Dec. 1, 2008; Mar. 26, 2009, eff. Dec. 1, 2009.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Subdivisions (a) and (b) of this rule are derived from Rules 5 and 6 F.R.App.P. The motion for leave to appeal is addressed to the district court or the bankruptcy appellate panel, although filed with the clerk of the bankruptcy court.

Subdivision (c) provides that if a party mistakenly believes the order appealed from is final and files only a notice of appeal, the appeal is not automatically dismissed. The district court or bankruptcy appellate panel has the options to direct that a motion be filed, to decide exclusively on the papers already filed to grant leave to appeal, or to deny leave to appeal. Cf. 28 U.S.C. § 2103.

COMMITTEE NOTES ON RULES—2008 AMENDMENT

The rule is amended to add subdivision (d) to solve the jurisdictional problem that could otherwise ensue

when a district court or bankruptcy appellate panel has not granted leave to appeal under 28 U.S.C. § 158(a)(3). If the court of appeals accepts the appeal, the requirement of leave to appeal is deemed satisfied. However, if the court of appeals does not authorize a direct appeal, the question of whether to grant leave to appeal remains a matter to be resolved by the district court or the bankruptcy appellate panel.

Changes Made After Publication. No changes were made after publication.

COMMITTEE NOTES ON RULES—2009 AMENDMENT

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

Rule 8004. Service of the Notice of Appeal

The clerk shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant or, if a party is not represented by counsel, to the party's last known address. Failure to serve notice shall not affect the validity of the appeal. The clerk shall note on each copy served the date of the filing of the notice of appeal and shall note in the docket the names of the parties to whom copies are mailed and the date of the mailing. The clerk shall forthwith transmit to the United States trustee a copy of the notice of appeal, but failure to transmit such notice shall not affect the validity of the appeal.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is an adaptation of Rule 3(d) F.R.App.P.

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

This rule is amended to keep the United States trustee informed of the progress of the case.

Rule 8005. Stay Pending Appeal

A motion for a stay of the judgment, order, or decree of a bankruptcy judge, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be presented to the bankruptcy judge in the first instance. Notwithstanding Rule 7062 but subject to the power of the district court and the bankruptcy appellate panel reserved hereinafter, the bankruptcy judge may suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest. A motion for such relief, or for modification or termination of relief granted by a bankruptcy judge, may be made to the district court or the bankruptcy appellate panel, but the motion shall show why the relief, modification, or termination was not obtained from the bankruptcy judge. The district court or the bankruptcy appellate panel may condition the relief it grants under this rule on