

reference is made in a brief to parts of the record included in the appendix, the reference should be to the appropriate pages of the appendix at which those parts appear.

Rule 8011. Motions

(a) **CONTENT OF MOTIONS; RESPONSE; REPLY.** A request for an order or other relief shall be made by filing with the clerk of the district court or the clerk of the bankruptcy appellate panel a motion for such order or relief with proof of service on all other parties to the appeal. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order within seven days after service of the motion, but the district court or the bankruptcy appellate panel may shorten or extend the time for responding to any motion.

(b) **DETERMINATION OF MOTIONS FOR PROCEDURAL ORDERS.** Notwithstanding subdivision (a) of this rule, motions for procedural orders, including any motion under Rule 9006, may be acted on at any time, without awaiting a response thereto and without hearing. Any party adversely affected by such action may move for reconsideration, vacation, or modification of the action.

(c) **DETERMINATION OF ALL MOTIONS.** All motions will be decided without oral argument unless the court orders otherwise. A motion for a stay, or for other emergency relief may be denied if not presented promptly.

(d) **EMERGENCY MOTIONS.** Whenever a movant requests expedited action on a motion on the ground that, to avoid irreparable harm, relief is needed in less time than would normally be required for the district court or bankruptcy appellate panel to receive and consider a response, the word "Emergency" shall precede the title of the motion. The motion shall be accompanied by an affidavit setting forth the nature of the emergency. The motion shall state whether all grounds advanced in support thereof were submitted to the bankruptcy judge and, if any grounds relied on were not submitted, why the motion should not be remanded to the bankruptcy judge for reconsideration. The motion shall include the office addresses and telephone numbers of moving and opposing counsel and shall be served pursuant to Rule 8008. Prior to filing the motion, the movant shall make every practicable effort to notify opposing counsel in time for counsel to respond to the motion. The affidavit accompanying the motion shall also state when and how opposing counsel was notified or if opposing counsel was not notified why it was not practicable to do so.

(e) **POWER OF A SINGLE JUDGE TO ENTERTAIN MOTIONS.** A single judge of a bankruptcy appellate panel may grant or deny any request for relief which under these rules may properly be sought by motion, except that a single judge may not dismiss or otherwise decide an appeal or a motion for leave to appeal. The action of a single judge may be reviewed by the panel.

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Subdivisions (a), (b) and (e) of this rule conform substantially to subdivisions (a), (b) and (c) of Rule 27 F.R.App.P. Subdivisions (c) and (d) are taken from Rule 13(c) and (d) of the Rules of the First Circuit governing appeals to bankruptcy appellate panels.

Rule 8012. Oral Argument

Oral argument shall be allowed in all cases unless the district judge or the judges of the bankruptcy appellate panel unanimously determine after examination of the briefs and record, or appendix to the brief, that oral argument is not needed. Any party shall have an opportunity to file a statement setting forth the reason why oral argument should be allowed.

Oral argument will not be allowed if (1) the appeal is frivolous; (2) the dispositive issue or set of issues has been recently authoritatively decided; or (3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is derived from Rule 34(a) F.R.App.P. The other details of oral argument which are covered by the remaining subdivisions of Rule 34 F.R.App.P are not in these rules and are left to local rule or order of the court.

Rule 8013. Disposition of Appeal; Weight Accorded Bankruptcy Judge's Findings of Fact

On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule accords to the findings of a bankruptcy judge the same weight given the findings of a district judge under Rule 52 F.R.Civ.P. See also Rules 7052(a) and 9014.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendment to this rule conforms the appellate review standard to Rule 52 F.R.Civ.P., as amended in August 1985.

Rule 8014. Costs

Except as otherwise provided by law, agreed to by the parties, or ordered by the district court or the bankruptcy appellate panel, costs shall be taxed against the losing party on an appeal. If a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court. Costs incurred in the production of copies of briefs, the appendices, and the record and in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal and the fee for filing the notice of appeal shall

be taxed by the clerk as costs of the appeal in favor of the party entitled to costs under this rule.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is an adaptation of Rule 39(a), (c) and (e) of the F.R.App.P. Under this rule all costs are taxed by the clerk of the bankruptcy court.

Rule 8015. Motion for Rehearing

Unless the district court or the bankruptcy appellate panel by local rule or by court order otherwise provides, a motion for rehearing may be filed within 14 days after entry of the judgment of the district court or the bankruptcy appellate panel. If a timely motion for rehearing is filed, the time for appeal to the court of appeals for all parties shall run from the entry of the order denying rehearing or the entry of subsequent judgment.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This is an adaptation of the first sentence of Rule 40(a) F.R.App.P. The filing of a motion for rehearing does not toll the time for taking an appeal to the court of appeals from the district court or the bankruptcy appellate panel. Appeals from a district court or a bankruptcy appellate panel are to the appropriate court of appeals. Under Rule 4(a)(4) F.R.App.P. the filing of post-trial motions in the district court has the effect of vitiating any prior notice of appeal and, on the district court's disposition of those post-trial motions, a new appeal period starts. Rule 4 F.R.App.P. does not, however, contain any provision which stays or otherwise alters the time for taking an appeal to the court of appeals when a motion for rehearing is filed under Rule 8015 with the district court or bankruptcy appellate panel.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

The amendment, which is derived from Rule 8002(b), Rule 4(a)(4) F.R.App.P., and Rule 11.1 Sup.Ct.R., clarifies the effect of the filing of a timely motion for rehearing. If a timely motion is filed, the appeal period to the court of appeals begins to run on the entry of an order denying the motion or the entry of a subsequent judgment.

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 deadline in the rule is 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 21-day periods
- 20-day periods become 28-day periods
- 25-day periods become 35-day periods

Rule 8016. Duties of Clerk of District Court and Bankruptcy Appellate Panel

(a) ENTRY OF JUDGMENT. The clerk of the district court or the clerk of the bankruptcy appellate panel shall prepare, sign and enter the judgment following receipt of the opinion of the court or the appellate panel or, if there is no opinion, following the instruction of the court or the appellate panel. The notation of a judgment

in the docket constitutes entry of judgment.

(b) NOTICE OF ORDERS OR JUDGMENTS; RETURN OF RECORD. Immediately on the entry of a judgment or order the clerk of the district court or the clerk of the bankruptcy appellate panel shall transmit a notice of the entry to each party to the appeal, to the United States trustee, and to the clerk, together with a copy of any opinion respecting the judgment or order, and shall make a note of the transmission in the docket. Original papers transmitted as the record on appeal shall be returned to the clerk on disposition 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

Subdivision (a) of this rule is adapted from Rule 36 F.R.App.P. Subdivision (b) is similar to subdivisions (c) and (d) of Rule 45 F.R.App.P.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

Subdivision (b) is amended to enable the United States trustee to monitor the progress of the case. The requirements of this subdivision apply to an order of the district court or bankruptcy appellate panel staying its judgment pending appeal to the court of appeals pursuant to Rule 8017(b).

Rule 8017. Stay of Judgment of District Court or Bankruptcy Appellate Panel

(a) AUTOMATIC STAY OF JUDGMENT ON APPEAL. Judgments of the district court or the bankruptcy appellate panel are stayed until the expiration of 14 days after entry, unless otherwise ordered by the district court or the bankruptcy appellate panel.

(b) STAY PENDING APPEAL TO THE COURT OF APPEALS. On motion and notice to the parties to the appeal, the district court or the bankruptcy appellate panel may stay its judgment pending an appeal to the court of appeals. The stay shall not extend beyond 30 days after the entry of the judgment of the district court or the bankruptcy appellate panel unless the period is extended for cause shown. If before the expiration of a stay entered pursuant to this subdivision there is an appeal to the court of appeals by the party who obtained the stay, the stay shall continue until final disposition by the court of appeals. A bond or other security may be required as a condition to the grant or continuation of a stay of the judgment. A bond or other security may be required if a trustee obtains a stay but a bond or security shall not be required if a stay is obtained by the United States or an officer or agency thereof or at the direction of any department of the Government of the United States.

(c) POWER OF COURT OF APPEALS NOT LIMITED. This rule does not limit the power of a court of appeals or any judge thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(As amended Mar. 26, 2009, eff. Dec. 1, 2009.)