

rules. Subdivision (b)(2) formerly required that an answer in opposition to a petition for permission to appeal, or a cross-petition for permission to appeal, be filed “within 7 days after the petition is served.” Under former Rule 26(a), “7 days” always meant at least 9 days and could mean as many as 11 or even 13 days. Under current Rule 26(a), intermediate weekends and holidays are counted. Changing the period from 7 to 10 days offsets the change in computation approach. See the Note to Rule 26.

Subdivision (d)(1). The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 26.

[Rule 5.1. Appeal by Leave under 28 U.S.C. § 636(c)(5)] (Abrogated Apr. 24, 1998, eff. Dec. 1, 1998)

COMMITTEE NOTES ON RULES—1998 AMENDMENT

The Federal Courts Improvement Act of 1996, Pub. L. No. 104-317, abolished appeals by permission under 28 U.S.C. § 636(c)(5), making Rule 5.1 obsolete. Rule 5.1 is, therefore, abrogated.

Rule 6. Appeal in a Bankruptcy Case from a Final Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel

(a) APPEAL FROM A JUDGMENT, ORDER, OR DECREE OF A DISTRICT COURT EXERCISING ORIGINAL JURISDICTION IN A BANKRUPTCY CASE. An appeal to a court of appeals from a final judgment, order, or decree of a district court exercising jurisdiction under 28 U.S.C. § 1334 is taken as any other civil appeal under these rules.

(b) APPEAL FROM A JUDGMENT, ORDER, OR DECREE OF A DISTRICT COURT OR BANKRUPTCY APPELLATE PANEL EXERCISING APPELLATE JURISDICTION IN A BANKRUPTCY CASE.

(1) *Applicability of Other Rules.* These rules apply to an appeal to a court of appeals under 28 U.S.C. § 158(d) from a final judgment, order, or decree of a district court or bankruptcy appellate panel exercising appellate jurisdiction under 28 U.S.C. § 158(a) or (b). But there are 3 exceptions:

(A) Rules 4(a)(4), 4(b), 9, 10, 11, 12(b), 13-20, 22-23, and 24(b) do not apply;

(B) the reference in Rule 3(c) to “Form 1 in the Appendix of Forms” must be read as a reference to Form 5; and

(C) when the appeal is from a bankruptcy appellate panel, the term “district court,” as used in any applicable rule, means “appellate panel.”

(2) *Additional Rules.* In addition to the rules made applicable by Rule 6(b)(1), the following rules apply:

(A) *Motion for Rehearing.*

(i) If a timely motion for rehearing under Bankruptcy Rule 8015 is filed, the time to appeal for all parties runs from the entry of the order disposing of the motion. A notice of appeal filed after the district court or bankruptcy appellate panel announces or enters a judgment, order, or decree—but before disposition of the motion for rehearing—becomes effective when the order disposing of the motion for rehearing is entered.

(ii) Appellate review of the order disposing of the motion requires the party, in compliance with Rules 3(c) and 6(b)(1)(B),

to amend a previously filed notice of appeal. A party intending to challenge an altered or amended judgment, order, or decree must file a notice of appeal or amended notice of appeal within the time prescribed by Rule 4—excluding Rules 4(a)(4) and 4(b)—measured from the entry of the order disposing of the motion.

(iii) No additional fee is required to file an amended notice.

(B) *The record on appeal.*

(i) Within 14 days after filing the notice of appeal, the appellant must file with the clerk possessing the record assembled in accordance with Bankruptcy Rule 8006—and serve on the appellee—a statement of the issues to be presented on appeal and a designation of the record to be certified and sent to the circuit clerk.

(ii) An appellee who believes that other parts of the record are necessary must, within 14 days after being served with the appellant’s designation, file with the clerk and serve on the appellant a designation of additional parts to be included.

(iii) The record on appeal consists of:

- the redesignated record as provided above;
- the proceedings in the district court or bankruptcy appellate panel; and
- a certified copy of the docket entries prepared by the clerk under Rule 3(d).

(C) *Forwarding the Record.*

(i) When the record is complete, the district clerk or bankruptcy appellate panel clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

(ii) All parties must do whatever else is necessary to enable the clerk to assemble and forward the record. The court of appeals may provide by rule or order that a certified copy of the docket entries be sent in place of the redesignated record, but any party may request at any time during the pendency of the appeal that the redesignated record be sent.

(D) *Filing the Record.* Upon receiving the record—or a certified copy of the docket entries sent in place of the redesignated record—the circuit clerk must file it and immediately notify all parties of the filing date.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 26, 2009, eff. Dec. 1, 2009.)

NOTES OF ADVISORY COMMITTEE ON RULES—1967

This rule is substantially a restatement of present procedure. See D.C. Cir. Rule 34; 6th Cir. Rule 11; 7th Cir. Rule 10(d); 10th Cir. Rule 13.

Present circuit rules commonly provide that the petition for allowance of an appeal shall be filed within the time allowed by Section 25 of the Bankruptcy Act for taking appeals of right. For the reasons explained in the Note accompanying Rule 4, that rule makes the time for appeal in bankruptcy cases the same as that which obtains in other civil cases and thus supersedes Section 25. Thus the present rule simply continues the former practice of making the time for filing the petition in appeals by allowance the same as that provided for filing the notice of appeal in appeals of right.

NOTES OF ADVISORY COMMITTEE ON RULES—1979
AMENDMENT

The proposed amendment adapts to the practice in appeals by allowance in bankruptcy proceedings the provisions of proposed Rule 3(e) above, requiring payment of all fees in the district court at the time of the filing of the notice of appeal. See Note to Rule 3(e), *supra*.

NOTES OF ADVISORY COMMITTEE ON RULES—1989
AMENDMENT

A new Rule 6 is proposed. The Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549, the Supreme Court decision in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), and the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, have made the existing Rule 6 obsolete.

Subdivision (a). Subdivision (a) provides that when a district court exercises original jurisdiction in a bankruptcy matter, rather than referring it to a bankruptcy judge for a final determination, the appeal should be taken in identical fashion as appeals from district court decisions in other civil actions. A district court exercises original jurisdiction and this subdivision applies when the district court enters a final order or judgment upon consideration of a bankruptcy judge's proposed findings of fact and conclusions of law in a non-core proceeding pursuant to 28 U.S.C. §157(c)(1) or when a district court withdraws a proceeding pursuant to 28 U.S.C. §157(d). This subdivision is included to avoid uncertainty arising from the question of whether a bankruptcy case is a civil case. The rules refer at various points to the procedure "in a civil case", *see, e.g.*, Rule 4(a)(1). Subdivision (a) makes it clear that such rules apply to an appeal from a district court bankruptcy decision.

Subdivision (b). Subdivision (b) governs appeals that follow intermediate review of a bankruptcy judge's decision by a district court or a bankruptcy appellate panel.

Subdivision (b)(1). Subdivision (b)(1) provides for the general applicability of the Federal Rules of Appellate Procedure, with specified exceptions, to appeals covered by subdivision (b) and makes necessary word adjustments.

Subdivision (b)(2). Paragraph (i) provides that the time for filing a notice of appeal shall begin to run anew from the entry of an order denying a rehearing or from the entry of a subsequent judgment. The Committee deliberately omitted from the rule any provision governing the validity of a notice of appeal filed prior to the entry of an order denying a rehearing; the Committee intended to leave undisturbed the current state of the law on that issue. Paragraph (ii) calls for a redesignation of the appellate record assembled in the bankruptcy court pursuant to Rule 8006 of the Rules of Bankruptcy Procedure. After an intermediate appeal, a party may well narrow the focus of its efforts on the second appeal and a redesignation of the record may eliminate unnecessary material. The proceedings during the first appeal are included to cover the possibility that independent error in the intermediate appeal, for

example failure to follow appropriate procedures, may be assigned in the court of appeals. Paragraph (iii) provides for the transmission of the record and tracks the appropriate subsections of Rule 11. Paragraph (iv) provides for the filing of the record and notices to the parties. Paragraph (ii) and Paragraph (iv) both refer to "a certified copy of the docket entries". The "docket entries" referred to are the docket entries in the district court or the bankruptcy appellate panel, not the entire docket in the bankruptcy court.

NOTES OF ADVISORY COMMITTEE ON RULES—1993
AMENDMENT

Note to Subparagraph (b)(2)(i). The amendment accompanies concurrent changes to Rule 4(a)(4). Although Rule 6 never included language such as that being changed in Rule 4(a)(4), language that made a notice of appeal void if it was filed before, or during the pendency of, certain posttrial motions, courts have found that a notice of appeal is premature if it is filed before the court disposes of a motion for rehearing. *See, e.g., In re X-Cel, Inc.*, 823 F.2d 192 (7th Cir. 1987); *In re Shah*, 859 F.2d 1463 (10th Cir. 1988). The Committee wants to achieve the same result here as in Rule 4, the elimination of a procedural trap.

COMMITTEE NOTES ON RULES—1998 AMENDMENT

The language and organization of the rule are amended to make the rule more easily understood. In addition to changes made to improve the understanding, the Advisory Committee has changed language to make style and terminology consistent throughout the appellate rules. These changes are intended to be stylistic only.

Subdivision (b). Language is added to Rule 6(b)(2)(A)(ii) to conform with the corresponding provision in Rule 4(a)(4). The new language is clarifying rather than substantive. The existing rule states that a party intending to challenge an alteration or amendment of a judgment must file an amended notice of appeal. Of course if a party has not previously filed a notice of appeal, the party would simply file a notice of appeal not an amended one. The new language states that the party must file "a notice of appeal or amended notice of appeal."

COMMITTEE NOTES ON RULES—2009 AMENDMENT

Subdivision (b)(2)(B). The times set in the former rule at 10 days have been revised to 14 days. See the Note to Rule 26.

REFERENCES IN TEXT

The Bankruptcy Rules, referred to in subd. (b)(2)(A)(i), (B)(i), are set out in the Appendix to Title 11, Bankruptcy.

Rule 7. Bond for Costs on Appeal in a Civil Case

In a civil case, the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal. Rule 8(b) applies to a surety on a bond given under this rule.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Apr. 24, 1998, eff. Dec. 1, 1998.)

NOTES OF ADVISORY COMMITTEE ON RULES—1967

This rule is derived from FRCP 73(c) without change in substance.

NOTES OF ADVISORY COMMITTEE ON RULES—1979
AMENDMENT

The amendment would eliminate the provision of the present rule that requires the appellant to file a \$250 bond for costs on appeal at the time of filing his notice of appeal. The \$250 provision was carried forward in the F.R.App.P. from former Rule 73(c) of the F.R.Civ.P., and the \$250 figure has remained unchanged since the