

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

PREAMBLE

TheseThese rulesThese rules of the United States BankruptcyThese rules of the United States Bankruptcy
promulgated under the authority of Federal Rule of Bankruptcy Procedure 8018.

Adopted, as Revised: February 24, 2000

Table of Contents

<u>Rule</u>	<u>Subject</u>	<u>Page</u>
8001(a)-1	Notice of Appeal	1
8001(e)-1	Election to Transfer Appeal to District Court	1
8006-1	Transcripts	1
8007(b)-1	Docketing Appeal and Appellate Record	2
8008(a)-1	Communications	2
8008(a)-3	Fax Filing	2
8009(a)-1	Briefs; Number of Copies; Extensions of Time . .	3
8009(b)-1	Appendix (Excerpts of the Record)	4
8010(a)-1	Form of Briefs and Certification Requirements . .	5
8010(c)-1	Length of Briefs	6
8011(d)-1	Emergency Motions	7
8011(e)-1	Delegation of Authority to Act on Motions	7
8012-1	Oral Argument	8
8013-1	Disposition of Appeal	8
8014-1	Costs	9
8018(b)-1	Silence of Local Rules	9
8018-2	Citation to Rules	9
8070-1	Dismissal for Failure to Prosecute	9
9001-1	Definitions	10
9010-1	Attorneys—Duties, Withdrawal, Substitution . . .	10
9010-2	Pro Se Parties	11

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

ORDER ORDER BEING APPEALED. . The appellant shall attach to the notice of. The appellant s
inin bankruptcy court a copy of the entered judgment,in bankruptcy court a copy of the entered judgment
waswas taken. The clerk of the bankruptcy courtwas taken. The clerk of the bankruptcy court shall for
If if the notice of appeal is filedIf the notice of appeal is filed before entry of the order being appealed
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)(a) TRANSFER. The Panel may transfer an appeal to the district court to further
thethe interests of justice, such as when a timely statement of election htthe interests of justice, such
related appeal, or for any other reason the Panel deems appropriate.

**(b)(b) ELECTION PROCEDURE WHEN MOTION(b) ELECTION PROCEDURE WHEN M
PENDING.** If appellant If appellant moves for leave to appeal pursuant If appellant moves for leave to
aa separate notice of appeal concurrently with filing the motion a separate notice of appeal concurr
leaveleave shall be treated as if it were a leave shall be treated as if it were a noticeleave shall be tre
period for filing an election.

**8006-1
TRANSCRIPTS**

TheThe excerpts of the record shall include the The excerpts of the record shall include the
reviewreview in light of the standard of review to be applied to the issues before thereview in light of the
PanelPanel is required to consider only thosePanel is required to consider only those portions of thePa
ofof the record. Parties shall coof the record. Parties shall cons of the record. Parties shall co
procedure for ordering transcripts or for indicating that transcripts are not necessary.

Explanatory Note:

*ThisThis rule addressesThis rule addresses tThis rule addresses two problems. The first
challengechallenge the oral tentativechallenge the oral tentative rulings, and/orchallenge the oral tentativ
ofof law of the bankruptcy court, and do not incof law of the bankruptcy court, and do not include
excerptsexcerpts of the recordexcerptsexcerpts of the record to allow the Panel to properly reviewexcerptsexcerpts of the
decision.decision. If findingsdecision. If findings of factdecision. If findings of fact and conclusions of law
aa transcript of those findingsa transcript of those findings is mandatory. In re McCarthy, 230 B.R. 414,, 2
Cir. BAP 1999).*

8010(a)-1
FORM OF BRIEFS AND CERTIFICATION REQUIREMENTS

(a) Form. Briefs shall be produced by a standard typographic print produces a clear black image on white paper, 8 ½ inches by 11 inches, with margins, in at least 14 point proportional margins, in at least 14 point proportional 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)(b) Certification as to Interested Parties. To enable the judges of a Panel To evaluate possible disqualification or recusal, all parties, other than evaluate possible disqualification or shall attach to the inside back cover of their initial briefs, a list of all of persons, firms, partnerships and corporations that have an interest in 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 pThe undersigned certifies that the fo interest in the outcome of this appeal. These interest in the outcome of this appeal are made to enable judges of the Panel to evaluate poare made to enable judges of the Panel to evaluate disqualification or recusal [list the names of all such parties and identify their connection and interest]:

Signed

Dated

**8011(d)-1
EMERGENCY MOTIONS**

(a) Form and Number. An emergency motion must have the legend "Emergency Motion" in large, bold type. The Clerk in an original and three copies.

(b) Contents. The motion and supporting declaration(s) must show 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 appeal was taken;
- (3) If the emergency motion concerns a stay pending appeal, the appendix must also contain:
 - (i) a conformed copy of the stay and any explanation 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 motion and appendix are directed to In re Wymer, 5 B.R. 802, 805-07, 5 B.R. 802, 805-07 (9th Cir. BAP 1980), 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 subject to disposition by a single judge pursuant to the order entered on the motion does not dispose of the pending appeal. The order disposing of the pending appeal if a written request for judicial review if a written request for judicial review order.

8012-1
ORAL ARGUMENT

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

The Panel may determine that oral argument is not needed. The Panel may determine that oral argument is not needed. If a motion for submission of the appeal on the briefs is granted, the motion for submission of the appeal on the briefs. If the motion for submission of the appeal on the briefs is granted, it will issue an order to that effect.

Rule 8013-1
DISPOSITION OF APPEAL

(a)(a) OPINION or MEMORANDUM. The Panel may designate an OPINION or MEMORANDUM. The Panel may determine the 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 as an OPINION or MEMORANDUM.

(b)(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)(c) CITATION. Unpublished memoranda and orders and may not be cited except when relevant under the doctrine of *res judicata*, or collateral estoppel.

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

**8014-1
COSTS**

Costs under FRBP 8014 are taxable in bankruptcy court. Costs under FRBP 8014 are taxable in bankruptcy court.

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

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

**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 of an appeal, the Panel may dismiss the appeal with prejudice and without reconsideration by the Panel if a writ is filed within (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 means a member of the United States Bankruptcy Appellate Panel of the Ninth Circuit.
- (c) The word "Panel" as used in these rules means the United States Bankruptcy Appellate Panel of the Ninth Circuit.
- (d) The acronym "BAP" as used in these rules means the United States Bankruptcy Appellate Panel of the Ninth Circuit.
- (e) The acronym "FRBP" as used in these rules means the Federal Rules Bankruptcy Procedure.
- (f) The acronym "FRAP" as used in these rules means the Federal Rules Appellate Procedure.

**9010-1
ATTORNEYS--Duties, Withdrawal, Substitution**

- (a) **DUTIES.** Counsel must ensure that the appeal is properly represented in a manner and within the times prescribed by these rules. Counsel must prosecute the appeal with diligence. Counsel must provide counsel's address, and telephone number on all documents filed with the BAP. Counsel's address, and telephone number 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 admitted to practice before such court shall be deemed admitted to practice before such court shall 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, and telephone number; and
 - (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. The motion to withdraw shall include the client's current address and telephone number.

(d)(d) NOTICE OF APPEARANCE. I. Immediately upon undertaking the representation, representation, any attorney who represents a party in an appeal, and who is not identified in either the notice of appeal or a notice in either the notice of appeal or a notice in either the 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 Parties unrepresented to be pro se parties representing themselves. Parties unrepresented by counsel and appearing before the Panel Parties unrepresented to be pro se parties representing themselves. Changes in address must be reported to the BAP Clerk in writing.

Explanatory Note:

See In re Rainbow Magazine, Inc., 77 F.3d 278, 77 F.3d 278 (9th Cir. 1996); In re Eisen, 1414 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).