

AMENDMENTS TO THE FEDERAL RULES OF
APPELLATE PROCEDURE

COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME COURT
OF THE UNITED STATES

TRANSMITTING

AMENDMENTS TO THE FEDERAL RULES OF APPELLATE PROCE-
DURE THAT HAVE BEEN ADOPTED BY THE SUPREME COURT,
PURSUANT TO 28 U.S.C. 2072



NOVEMBER 12, 2014.—Referred to the Committee on the Judiciary and
ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

SUPREME COURT OF THE UNITED STATES,
Washington, DC, April 25, 2014.

Hon. JOHN A. BOEHNER,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: I have the honor to submit to the Congress the amendments to the Federal Rules of Appellate Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying this rule are excerpts from the Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States containing the Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,

JOHN G. ROBERTS, Jr.,
Chief Justice.

April 25, 2014

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Appellate Procedure be, and they hereby are, amended by including therein amendments to Appellate Rule 6.

[See *infra*, pp. ___ __.]

2. That the foregoing amendments to the Federal Rules of Appellate Procedure shall take effect on December 1, 2014, and shall govern in all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Appellate Procedure in accordance with the provisions of Section 2072 of Title 28, United States Code.

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF APPELLATE PROCEDURE**

Rule 6. Appeal in a Bankruptcy Case

- (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)(1) from a final judgment, order, or decree of a district court or bankruptcy

2 FEDERAL RULES OF APPELLATE PROCEDURE

appellate panel exercising appellate jurisdiction under 28 U.S.C. § 158(a) or (b), but with these qualifications:

- (A) Rules 4(a)(4), 4(b), 9, 10, 11, 12(c), 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;
- (C) when the appeal is from a bankruptcy appellate panel, “district court,” as used in any applicable rule, means “appellate panel”; and
- (D) in Rule 12.1, “district court” includes a bankruptcy court or bankruptcy 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 8022 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) If a party intends to challenge the order disposing of the motion – or the alteration or amendment of a judgment, order, or decree upon the motion – then the party, in compliance with Rules 3(c) and 6(b)(1)(B), must file a notice of appeal or amended notice of appeal. The notice or amended notice must be filed 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 8009 – 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 made available 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) Making the Record Available.

- (i) When the record is complete, the district clerk or bankruptcy-appellate-panel clerk must number the documents constituting the record and

promptly make it available to the circuit clerk. If the clerk makes the record available in paper form, the clerk will not send 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, unless directed to do so by a party or the circuit clerk. If unusually bulky or heavy exhibits are to be made available in paper form, 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 the record and make it available. When the record is made available in paper form, the court of appeals may provide by rule or order that a certified copy of the docket entries be made available 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 made available.

(D) **Filing the Record.** When the district clerk or bankruptcy-appellate-panel clerk has made the record available, the circuit clerk must note that fact on the docket. The date noted on the docket serves as the filing date of the record. The circuit clerk must

immediately notify all parties of the filing date.

(c) Direct Review by Permission Under 28 U.S.C. § 158(d)(2).

(1) Applicability of Other Rules. These rules apply to a direct appeal by permission under 28 U.S.C. § 158(d)(2), but with these qualifications:

- (A) Rules 3-4, 5(a)(3), 6(a), 6(b), 8(a), 8(e), 9-12, 13-20, 22-23, and 24(b) do not apply;
- (B) as used in any applicable rule, “district court” or “district clerk” includes – to the extent appropriate – a bankruptcy court or bankruptcy appellate panel or its clerk; and

(C) the reference to “Rules 11 and 12(c)” in Rule 5(d)(3) must be read as a reference to Rules 6(c)(2)(B) and (C).

(2) **Additional Rules.** In addition, the following rules apply:

(A) **The Record on Appeal.** Bankruptcy Rule 8009 governs the record on appeal.

(B) **Making the Record Available.** Bankruptcy Rule 8010 governs completing the record and making it available.

(C) **Stays Pending Appeal.** Bankruptcy Rule 8007 applies to stays pending appeal.

(D) **Duties of the Circuit Clerk.** When the bankruptcy clerk has made the record available, the circuit clerk must note that fact on the docket. The date noted on the

docket serves as the filing date of the record. The circuit clerk must immediately notify all parties of the filing date.

(E) Filing a Representation Statement.

Unless the court of appeals designates another time, within 14 days after entry of the order granting permission to appeal, the attorney who sought permission must file a statement with the circuit clerk naming the parties that the attorney represents on appeal.



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

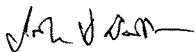
THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

HONORABLE JOHN D. BATES
Secretary

November 6, 2013

MEMORANDUM

To: The Chief Justice of the United States and
Associate Justices of the Supreme Court

From: Judge John D. Bates 

RE: TRANSMITTAL OF PROPOSED AMENDMENTS TO THE FEDERAL RULES OF
APPELLATE PROCEDURE

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit herewith for consideration of the Court proposed amendments to Rule 6 of the Federal Rules of Appellate Procedure, which were approved by the Judicial Conference at its September 2013 session. The Judicial Conference recommends that the amendments be approved by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering the proposed amendments, I am transmitting: (i) a redline version of the amendments; (ii) an excerpt from the Report of the Committee on Rules of Practice and Procedure to the Judicial Conference; and (iii) an excerpt from the Report of the Advisory Committee on the Federal Rules of Appellate Procedure.

Attachments

EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES:

* * * * *

FEDERAL RULES OF APPELLATE PROCEDURE

Rule Recommended for Approval and Transmission

The Advisory Committee on Appellate Rules submitted a proposed amendment to Rule 6, with a recommendation that it be approved and transmitted to the Judicial Conference. The proposed amendment was circulated to the bench, bar, and public for comment in August 2012.

Rule 6 concerns appeals to the courts of appeals in bankruptcy cases. The proposed amendment would (1) update cross-references to Part VIII of the Bankruptcy Rules; (2) amend Rule 6(b)(2)(A)(ii) to remove an ambiguity dating from the 1998 restyling; (3) add a new Rule 6(c) to address permissive direct appeals from the bankruptcy court under 28 U.S.C. § 158(d)(2); and (4) revise Rule 6 to take account of the range of methods available now or in the future for dealing with the record on appeal.

The current Appellate Rules do not expressly address permissive direct appeals from a bankruptcy court to a court of appeals under 28 U.S.C. § 158(d)(2). When section 158(d)(2) was enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), the advisory committee decided that no immediate action was warranted because BAPCPA established interim procedures for administering the new direct appeals mechanism. Some of those interim procedures were displaced by the 2008 addition of subdivision (f) in Bankruptcy Rule 8001, making desirable an amendment specifying how the Appellate Rules

apply to direct appeals under § 158(d)(2).

Proposed Rule 6(c) would treat the record on direct appeals from a bankruptcy court differently than existing Rule 6(b) treats the record on bankruptcy appeals from a district court or bankruptcy appellate panel. Rule 6(b) contains a streamlined procedure for redesignating and forwarding the record on appeal because in appeals covered by Rule 6(b), the appellate record already will have been compiled for purposes of the appeal to the district court or the bankruptcy appellate panel. In a direct appeal, however, the record is generally compiled from scratch. The closest model for the compilation and transmission of the bankruptcy court record appears in Part VIII of the Bankruptcy Rules, which addresses appeals from the bankruptcy court to the district court or the bankruptcy appellate panel. Proposed Rule 6(c) would therefore incorporate the relevant Part VIII rules by reference, while making some adjustments to account for the particularities of direct appeals to the court of appeals.

The effort to revise Appellate Rule 6 and an effort to revise Part VIII of the Bankruptcy Rules with respect to appeals, discussed *infra*, highlight changes in the treatment of the record. The Appellate Rules were drafted on the assumption that the record on appeal would be available only in paper form. In contrast, Part VIII of the Bankruptcy Rules has been drafted with the default principle that the record will be made available in electronic form. In revising Rule 6(b) and in drafting new Rule 6(c), the advisory committee was mindful of the shift to electronic filing and adopted language that accommodates the various ways in which the lower court record could be made available to the court of appeals. Such language is particularly salient in the case of proposed Rule 6(c) because it would incorporate by reference the Bankruptcy Rules that deal with the record on appeal.

Following publication of the proposed changes to Rule 6, the advisory committee received one comment, submitted by a bankruptcy judge, which the advisory committee added to its agenda for future consideration. The advisory committee, however, decided to make no change to the proposal as published.

The Committee concurred with the advisory committee's recommendation.

Recommendation: That the Judicial Conference approve the proposed amendment to Appellate Rule 6, and transmit it to the Supreme Court for consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

* * * * *

Respectfully submitted,



Jeffrey S. Sutton, Chair

James M. Cole	David F. Levi
Dean C. Colson	Patrick J. Schiltz
Roy T. Englert, Jr.	Larry A. Thompson
Gregory G. Garre	Richard C. Wesley
Neil M. Gorsuch	Diane P. Wood
Marilyn L. Huff	Jack Zouhary
Wallace B. Jefferson	

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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CRIMINAL RULES

SIDNEY A. FITZWATER
EVIDENCE RULES

MEMORANDUM

To: Honorable Jeffrey S. Sutton, Chair
Standing Committee on Rules of Practice and Procedure

From: Honorable Steven M. Colloton, Chair
Advisory Committee on Federal Rules of Appellate Procedure

Date: May 8, 2013

Re: Report of the Advisory Committee on Appellate Rules

I. Introduction

The Advisory Committee on Appellate Rules met on April 22 and 23, 2013, in Washington, DC. The Committee gave final approval to proposed amendments to Appellate Rule 6.

* * * * *

II. Action Item for Final Approval: Proposed Amendments to Appellate Rule 6

As discussed in the report of the Bankruptcy Rules Committee, that Committee seeks final approval of proposed amendments to Part VIII of the Bankruptcy Rules – the rules that govern appeals from bankruptcy court to a district court or bankruptcy appellate panel (“BAP”). In tandem with that project, the Appellate Rules Committee seeks final approval of proposed amendments to Appellate Rule 6 (concerning appeals to the court of appeals in a bankruptcy case).

The proposed amendments to Appellate Rule 6 (which are set out in the enclosure to this report) would (1) update that Rule’s cross-references to the Bankruptcy Part VIII Rules, (2) amend Rule 6(b)(2)(A)(ii) to remove an ambiguity dating from the 1998 restyling, (3) add a new Rule 6(c) to address permissive direct appeals from the bankruptcy court under 28 U.S.C. § 158(d)(2), and (4) revise Rule 6 to take account of the range of methods available now or in the future for dealing with the record on appeal.

The Appellate Rules do not expressly address permissive direct appeals from a bankruptcy court to a court of appeals under 28 U.S.C. § 158(d)(2). When Section 158(d)(2) was enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), the Appellate Rules Committee decided that no immediate action was necessary, because BAPCPA established interim procedures for administering the new direct appeals mechanism. Some of those interim procedures were displaced by the 2008 addition of subdivision (f) in Bankruptcy Rule 8001. The Committee now considers it appropriate to specify how the Appellate Rules apply to direct appeals under Section 158(d)(2).

Proposed Appellate Rule 6(c) would treat the record on direct appeals differently than existing Rule 6(b) treats the record on bankruptcy appeals from a district court or BAP. Rule 6(b) contains a streamlined procedure for redesignating and forwarding the record on appeal, because in the appeals covered by Rule 6(b), the appellate record already will have been compiled for purposes of the appeal to the district court or the BAP. In a direct appeal, the record generally will be compiled from scratch. The closest model for the compilation and transmission of the bankruptcy court record is the set of rules chosen by the Bankruptcy Rules Part VIII project for appeals from the bankruptcy court to the district court or the BAP. Thus, proposed Rule 6(c) incorporates the relevant Part VIII rules by reference while making some adjustments to account for the particularities of direct appeals to the court of appeals.

Both the Bankruptcy Rules Part VIII project and the project to revise Appellate Rule 6 have highlighted changes in the treatment of the record. The Appellate Rules were drafted on the assumption that the record on appeal would be available only in paper form. The proposed Part VIII Rules are drafted with a contrary presumption in mind: The default principle under those Rules is that the record will be made available in electronic form. In revising Rule 6(b) and in drafting new Rule 6(c), the Appellate Rules Committee adopted language that can accommodate the various ways in which the lower-court record could be made available to the court of appeals – e.g., in paper form, in electronic files that can be sent to the court of appeals, or by means of

electronic links. Such language seems advisable in the light of the shift to electronic filing; and such language seems particularly salient in the case of proposed Rule 6(c) because that Rule will incorporate by reference the Part VIII Rules that deal with the record on appeal.

A. Text of proposed amendments and Committee Note

The Committee recommends final approval of the proposed amendments to Rule 6 as set out in the enclosure to this report.

B. Changes made after publication and comment

The Committee received one comment on the proposed amendments to Rule 6, from Judge S. Martin Teel, Jr., a United States Bankruptcy Judge in the District of Columbia. Judge Teel's suggestions are described in the enclosure to this report. The Committee decided that the suggestions warrant further study, but that it was not advisable to implement them in the context of the current proposal. Instead, the Committee added Judge Teel's suggestions to its agenda for future consideration. The Committee made no change in the proposal as published.

* * * * *

PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF APPELLATE PROCEDURE*

1 Rule 6. Appeal in a Bankruptcy Case ~~From a Final~~
2 ~~Judgment, Order, or Decree of a District~~
3 ~~Court or Bankruptcy Appellate Panel~~

4 (a) Appeal From a Judgment, Order, or Decree of a
5 District Court Exercising Original Jurisdiction in a
6 Bankruptcy Case. An appeal to a court of appeals
7 from a final judgment, order, or decree of a district
8 court exercising jurisdiction under 28 U.S.C. § 1334 is
9 taken as any other civil appeal under these rules.

10 (b) Appeal From a Judgment, Order, or Decree of a
11 District Court or Bankruptcy Appellate Panel
12 Exercising Appellate Jurisdiction in a Bankruptcy
13 Case.

14 (1) Applicability of Other Rules. These rules
15 apply to an appeal to a court of appeals under

* New material is underlined; matter to be omitted is lined through.

16 28 U.S.C. § 158(d)(1) from a final judgment,
17 order, or decree of a district court or bankruptcy
18 appellate panel exercising appellate jurisdiction
19 under 28 U.S.C. § 158(a) or (b). ~~But there are 3~~
20 exceptions, but with these qualifications:
21 (A) Rules 4(a)(4), 4(b), 9, 10, 11, ~~42(b)~~12(c),
22 13-20, 22-23, and 24(b) do not apply;
23 (B) the reference in Rule 3(c) to “Form 1 in the
24 Appendix of Forms” must be read as a
25 reference to Form 5; ~~and~~
26 (C) when the appeal is from a bankruptcy
27 appellate panel, ~~the term~~ “district court,” as
28 used in any applicable rule, means
29 “appellate panel.”; and

30 (D) in Rule 12.1, “district court” includes a
31 bankruptcy court or bankruptcy appellate
32 panel.

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

36 (A) **Motion for ~~r~~Rehearing.**

37 (i) If a timely motion for rehearing under
38 Bankruptcy Rule ~~8015~~8022 is filed,
39 the time to appeal for all parties runs
40 from the entry of the order disposing
41 of the motion. A notice of appeal filed
42 after the district court or bankruptcy
43 appellate panel announces or enters a
44 judgment, order, or decree – but
45 before disposition of the motion for

46 rehearing – becomes effective when
47 the order disposing of the motion for
48 rehearing is entered.

49 (ii) ~~Appellate review of~~ a party intends
50 to challenge the order disposing of the
51 motion – or the alteration or
52 amendment of a judgment, order, or
53 decree upon the motion –
54 then requires the party, in compliance
55 with Rules 3(c) and 6(b)(1)(B), to
56 ~~amend a previously filed notice of~~
57 ~~appeal. A party intending to challenge~~
58 ~~an altered or amended judgment,~~
59 ~~order, or decree~~ must file a notice of
60 appeal or amended notice of appeal.
61 The notice or amended notice must be

62 filed within the time prescribed by
63 Rule 4 – excluding Rules 4(a)(4) and
64 4(b) – measured from the entry of the
65 order disposing of the motion.

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

68 **(B) ~~The r~~Record on aAppeal.**

69 (i) Within 14 days after filing the notice
70 of appeal, the appellant must file with
71 the clerk possessing the record
72 assembled in accordance with
73 Bankruptcy Rule ~~8006~~8009 – and
74 serve on the appellee – a statement of
75 the issues to be presented on appeal
76 and a designation of the record to be

77 certified and ~~sent~~made available to the
78 circuit clerk.

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

86 (iii) The record on appeal consists of:
87 • the redesignated record as
88 provided above;
89 • the proceedings in the district
90 court or bankruptcy appellate
91 panel; and

- 92 • a certified copy of the docket
93 entries prepared by the clerk
94 under Rule 3(d).

95 (C) ~~Forwarding~~Making

96 the ~~Record~~ Record Available.

- 97 (i) When the record is complete, the
98 district clerk or bankruptcy-appellate-
99 panel clerk must number the
100 documents constituting the record
101 and ~~send~~promptly make it
102 available ~~them promptly to the circuit~~
103 ~~clerk together with a list of the~~
104 ~~documents correspondingly numbered~~
105 ~~and reasonably identified~~to the circuit
106 ~~clerk. Unless directed to do so by a~~
107 ~~party or the circuit clerk~~If the clerk

108 makes the record available in paper
109 form, the clerk will not send ~~to the~~
110 ~~court of appeals~~ documents of unusual
111 bulk or weight, physical exhibits other
112 than documents, or other parts of the
113 record designated for omission by
114 local rule of the court of appeals,
115 unless directed to do so by a party or
116 the circuit clerk. If ~~the exhibits are~~
117 unusually bulky or heavy exhibits are
118 to be made available in paper form, a
119 party must arrange with the clerks in
120 advance for their transportation and
121 receipt.

122 (ii) All parties must do whatever else is
123 necessary to enable the clerk to

124 assemble the record and forward ~~the~~
125 ~~record~~ make it available. When the
126 record is made available in paper
127 form, ~~t~~The court of appeals may
128 provide by rule or order that a certified
129 copy of the docket entries
130 be ~~sent~~ made available in place of the
131 redesignated record, ~~b.~~ But any party
132 may request at any time during the
133 pendency of the appeal that the
134 redesignated record be ~~sent~~ made
135 available.

136 (D) **Filing the rRecord.** ~~Upon receiving the~~
137 ~~record or a certified copy of the docket~~
138 ~~entries sent in place of the redesignated~~
139 ~~record the circuit clerk must file it and~~

140 ~~immediately notify all parties of the filing~~
141 ~~date~~When the district clerk or bankruptcy-
142 ~~appellate-panel~~ clerk has made the record
143 available, the circuit clerk must note that
144 fact on the docket. The date noted on the
145 docket serves as the filing date of the
146 record. The circuit clerk must immediately
147 notify all parties of the filing date.

148 **(c) Direct Review by Permission Under 28 U.S.C.**

149 **§ 158(d)(2).**

150 **(1) Applicability of Other Rules.** These rules
151 apply to a direct appeal by permission under 28
152 U.S.C. § 158(d)(2), but with these qualifications:
153 **(A) Rules 3-4, 5(a)(3), 6(a), 6(b), 8(a), 8(c), 9-**
154 **12, 13-20, 22-23, and 24(b) do not apply;**

155 (B) as used in any applicable rule, “district
156 court” or “district clerk” includes – to the
157 extent appropriate – a bankruptcy court or
158 bankruptcy appellate panel or its clerk; and
159 (C) the reference to “Rules 11 and 12(c)” in
160 Rule 5(d)(3) must be read as a reference to
161 Rules 6(c)(2)(B) and (C).

162 (2) Additional Rules. In addition, the following
163 rules apply:

164 (A) The Record on Appeal. Bankruptcy
165 Rule 8009 governs the record on appeal.

166 (B) Making the Record Available.
167 Bankruptcy Rule 8010 governs completing
168 the record and making it available.

169 (C) Stays Pending Appeal. Bankruptcy
170 Rule 8007 applies to stays pending appeal.

171 (D) Duties of the Circuit Clerk. When the
172 bankruptcy clerk has made the record
173 available, the circuit clerk must note that
174 fact on the docket. The date noted on the
175 docket serves as the filing date of the
176 record. The circuit clerk must immediately
177 notify all parties of the filing date.

178 (E) Filing a Representation Statement.
179 Unless the court of appeals designates
180 another time, within 14 days after entry of
181 the order granting permission to appeal, the
182 attorney who sought permission must file a
183 statement with the circuit clerk naming the
184 parties that the attorney represents on
185 appeal.

Committee Note

Subdivision (b)(1). Subdivision (b)(1) is updated to reflect the renumbering of 28 U.S.C. § 158(d) as 28 U.S.C. § 158(d)(1). Subdivision (b)(1)(A) is updated to reflect the renumbering of Rule 12(b) as Rule 12(c). New subdivision (b)(1)(D) provides that references in Rule 12.1 to the “district court” include – as appropriate – a bankruptcy court or bankruptcy appellate panel.

Subdivision (b)(2). Subdivision (b)(2)(A)(i) is amended to refer to Bankruptcy Rule 8022 (in accordance with the renumbering of Part VIII of the Bankruptcy Rules).

Subdivision (b)(2)(A)(ii) is amended to address problems that stemmed from the adoption — during the 1998 restyling project — of language referring to challenges to “an altered or amended judgment, order, or decree.” Current Rule 6(b)(2)(A)(ii) states that “[a] party intending to challenge an altered or amended judgment, order, or decree must file a notice of appeal or amended notice of appeal” Before the 1998 restyling, the comparable subdivision of Rule 6 instead read “[a] party intending to challenge an alteration or amendment of the judgment, order, or decree shall file an amended notice of appeal” The 1998 restyling made a similar change in Rule 4(a)(4). One court has explained that the 1998 amendment introduced ambiguity into that Rule: “The new formulation could be read to expand the obligation to file an amended notice to circumstances where the ruling on the post-trial motion alters the prior judgment in an

insignificant manner or in a manner favorable to the appellant, even though the appeal is not directed against the alteration of the judgment.” *Sorensen v. City of New York*, 413 F.3d 292, 296 n.2 (2d Cir. 2005). Though the *Sorensen* court was writing of Rule 4(a)(4), a similar concern arises with respect to Rule 6(b)(2)(A)(ii). Rule 4(a)(4) was amended in 2009 to remove the ambiguity identified by the *Sorensen* court. The current amendment follows suit by removing Rule 6(b)(2)(A)(ii)’s reference to challenging “an altered or amended judgment, order, or decree,” and referring instead to challenging “the alteration or amendment of a judgment, order, or decree.”

Subdivision (b)(2)(B)(i) is amended to refer to Rule 8009 (in accordance with the renumbering of Part VIII of the Bankruptcy Rules).

Due to the shift to electronic filing, in some appeals the record will no longer be transmitted in paper form. Subdivisions (b)(2)(B)(i), (b)(2)(C), and (b)(2)(D) are amended to reflect the fact that the record sometimes will be made available electronically.

Subdivision (b)(2)(D) sets the duties of the circuit clerk when the record has been made available. Because the record may be made available in electronic form, subdivision (b)(2)(D) does not direct the clerk to “file” the record. Rather, it directs the clerk to note on the docket the date when the record was made available and to notify the parties of that date, which shall serve as the date of filing the record for purposes of provisions in these Rules that calculate time from that filing date.

Subdivision (c). New subdivision (c) is added to govern permissive direct appeals from the bankruptcy court to the court of appeals under 28 U.S.C. § 158(d)(2). For further provisions governing such direct appeals, see Bankruptcy Rule 8006.

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

Subdivision (c)(2). Subdivision (c)(2)(A) provides that the record on appeal is governed by Bankruptcy Rule 8009. Subdivision (c)(2)(B) provides that the record shall be made available as stated in Bankruptcy Rule 8010. Subdivision (c)(2)(C) provides that Bankruptcy Rule 8007 applies to stays pending appeal; in addition, Appellate Rule 8(b) applies to sureties on bonds provided in connection with stays pending appeal.

Subdivision (c)(2)(D), like subdivision (b)(2)(D), directs the clerk to note on the docket the date when the record was made available and to notify the parties of that date, which shall serve as the date of filing the record for purposes of provisions in these Rules that calculate time from that filing date.

Subdivision (c)(2)(E) is modeled on Rule 12(b), with appropriate adjustments.

Changes Made After Publication and Comment

No changes were made after publication and comment.

