

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 PROCEDURE THAT HAVE BEEN ADOPTED BY THE SUPREME COURT OF THE UNITED STATES, PURSUANT TO SECTION 2072 OF TITLE 28, UNITED STATES CODE



APRIL 24, 2025.—Referred to the Committee on the Judiciary and ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

★ 59-011

WASHINGTON : 2025

SUPREME COURT OF THE UNITED STATES,
Washington, DC, April 23, 2025.

Hon. MIKE JOHNSON,
Speaker, United States House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: I have the honor to submit to the Congress 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 the amended rules are the following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated October 17, 2024; a blackline version of the rules with committee notes; an excerpt from the September 2024 report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and an excerpt from the May 2024 report of the Advisory Committee on Appellate Rules.

Sincerely,

JOHN G. ROBERTS, Jr.,
Chief Justice.

April 23, 2025

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. The Federal Rules of Appellate Procedure are amended to include amendments to Rules 6 and 39.

[*See infra* pp. — — —.]

2. The foregoing amendments to the Federal Rules of Appellate Procedure shall take effect on December 1, 2025, and shall govern in all proceedings in appellate cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. THE CHIEF JUSTICE is authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Appellate Procedure in accordance with the provisions of Section 2074 of Title 28, United States Code.

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

**Rule 6. Appeal in a Bankruptcy Case or
 Proceeding**

- (a) Appeal From a Judgment, Order, or Decree of a
 District Court Exercising Original Jurisdiction in
 a Bankruptcy Case or Proceeding.** An appeal to a
court of appeals from a final judgment, order, or
decree of a district court exercising original
jurisdiction in a bankruptcy case or proceeding under
28 U.S.C. § 1334 is taken as any other civil appeal
under these rules. But the reference in
Rule 4(a)(4)(A) to the time allowed for motions
under certain Federal Rules of Civil Procedure must
be read as a reference to the time allowed for the
equivalent motions under the applicable Federal
Rules of Bankruptcy Procedure, which may be
shorter than the time allowed under the Civil Rules.

00004

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

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

* * * * *

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

* * * * *

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

(A) **Motion for Rehearing.**

* * * * *

- (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 accordance 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.

* * * * *

(C) **Making the Record Available.**

* * * * *

- (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 at
any time during the appeal's

pendency, any party may request 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 as noted serves as the filing date of the record. The circuit clerk must immediately notify all parties of that date.

- (c) **Direct Appeal from a Judgment, Order, or Decree of a Bankruptcy Court by Authorization Under 28 U.S.C. § 158(d)(2).**

- (1) **Applicability of Other Rules.** These rules apply to a direct appeal from a judgment, order, or decree of a bankruptcy court by

authorization under 28 U.S.C. § 158(d)(2),
but with these qualifications:

- (A) Rules 3–4, 5 (except as provided in this Rule 6(c)), 6(a), 6(b), 8(a), 8(c), 9–12, 13–20, 22–23, and 24(b) do not apply; and
 - (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.
- (2) **Additional Rules.** In addition to the rules made applicable by Rule 6(c)(1), the following rules apply:
- (A) **Petition to Authorize a Direct Appeal.** Within 30 days after a certification of a bankruptcy court’s order for direct appeal to the court of

appeals under 28 U.S.C. § 158(d)(2) becomes effective under Bankruptcy Rule 8006(a), any party to the appeal may ask the court of appeals to authorize a direct appeal by filing a petition with the circuit clerk under Bankruptcy Rule 8006(g).

(B) **Contents of the Petition.** The petition must include the material required by Rule 5(b)(1) and an attached copy of:

- (i) the certification; and
- (ii) the notice of appeal of the bankruptcy court's judgment, order, or decree filed under Bankruptcy Rule 8003 or 8004.

(C) **Answer or Cross-Petition; Oral Argument.** Rule 5(b)(2) governs an answer or cross-petition. Rule 5(b)(3) governs oral argument.

(D) **Form of Papers; Number of Copies; Length Limits.** Rule 5(c) governs the required form, number of copies to be filed, and length limits applicable to the petition and any answer or cross-petition.

(E) **Notice of Appeal; Calculating Time.** A notice of appeal to the court of appeals need not be filed. The date when the order authorizing the direct appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

**(F) Notification of the Order
Authorizing Direct Appeal; Fees;
Docketing the Appeal.**

- (i) When the court of appeals enters the order authorizing the direct appeal, the circuit clerk must notify the bankruptcy clerk and the district court clerk or bankruptcy-appellate-panel clerk of the entry.
- (ii) Within 14 days after the order authorizing the direct appeal is entered, the appellant must pay the bankruptcy clerk any unpaid required fee, including:

- the fee required for the appeal to the district court or bankruptcy appellate panel; and
 - the difference between the fee for an appeal to the district court or bankruptcy appellate panel and the fee required for an appeal to the court of appeals.
- (iii) The bankruptcy clerk must notify the circuit clerk once the appellant has paid all required fees. Upon receiving the notice, the circuit clerk must enter the direct appeal on the docket.

- (G) **Stay Pending Appeal.** Bankruptcy Rule 8007 governs any stay pending appeal.
- (H) **The Record on Appeal.** Bankruptcy Rule 8009 governs the record on appeal. If a party has already filed a document or completed a step required to assemble the record for the appeal to the district court or bankruptcy appellate panel, the party need not repeat that filing or step.
- (I) **Making the Record Available.** Bankruptcy Rule 8010 governs completing the record and making it available. When the court of appeals enters the order authorizing the direct appeal, the bankruptcy clerk must

make the record available to the circuit clerk.

(J) **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 as noted serves as the filing date of the record. The circuit clerk must immediately notify all parties of that date.

(K) **Filing a Representation Statement.** Unless the court of appeals designates another time, within 14 days after the order authorizing the direct appeal is entered, the attorney for each party to the appeal must file a statement with the circuit clerk naming the parties that the attorney represents on appeal.

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

Rule 39. Costs

- (a) **Allocating Costs Among the Parties.** The following rules apply to allocating taxable costs among the parties unless the law provides, the parties agree, or the court orders otherwise:
- (1) if an appeal is dismissed, costs are allocated against the appellant;
 - (2) if a judgment is affirmed, costs are allocated against the appellant;
 - (3) if a judgment is reversed, costs are allocated against the appellee;
 - (4) if a judgment is affirmed in part, reversed in part, modified, or vacated, each party bears its own costs.
- (b) **Reconsideration.** Once the allocation of costs is established by the entry of judgment, a party may

seek reconsideration of that allocation by filing a motion in the court of appeals within 14 days after the entry of judgment. But issuance of the mandate under Rule 41 must not be delayed awaiting a determination of the motion. The court of appeals retains jurisdiction to decide the motion after the mandate issues.

- (c) **Costs Governed by Allocation Determination.** The allocation of costs applies both to costs taxable in the court of appeals under Rule 39(e) and to costs taxable in district court under Rule 39(f).
- (d) **Costs For and Against the United States.** Costs for or against the United States, its agency, or officer will be allocated under Rule 39(a) only if authorized by law.
- (e) **Costs on Appeal Taxable in the Court of Appeals.**

- (1) **Costs Taxable.** The following costs on appeal are taxable in the court of appeals for the benefit of the party entitled to costs:
 - (A) the production of necessary copies of a brief or appendix, or copies of records authorized by Rule 30(f);
 - (B) the docketing fee; and
 - (C) a filing fee paid in the court of appeals.
- (2) **Costs of Copies.** Each court of appeals must, by local rule, set the maximum rate for taxing the cost of producing necessary copies of a brief or appendix, or copies of records authorized by Rule 30(f). The rate must not exceed that generally charged for such work in the area where the clerk's office is located and should encourage economical methods of copying.

(3) **Bill of Costs; Objections; Insertion in Mandate.**

- (A) A party who wants costs taxed in the court of appeals must—within 14 days after judgment is entered—file with the circuit clerk and serve an itemized and verified bill of those costs.
- (B) Objections must be filed within 14 days after the bill of costs is served, unless the court extends the time.
- (C) The clerk must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the district clerk must—upon the

circuit clerk's request—add the
statement of costs, or any amendment
of it, to the mandate.

(f) Costs on Appeal Taxable in the District Court.

The following costs on appeal are taxable in the
district court for the benefit of the party entitled to
costs:

* * * * *



THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

HONORABLE ROBERT J. CONRAD, JR.
Secretary

October 17, 2024

MEMORANDUM

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

From: Judge Robert J. Conrad, Jr. *Robert J. Conrad, Jr.*
Secretary

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 for the Court's consideration proposed amendments to Rules 6 and 39 of the Federal Rules of Appellate Procedure, which have been approved by the Judicial Conference. The Judicial Conference recommends that the amendments be adopted by the Court and transmitted to Congress pursuant to law.

For your assistance in considering the proposed amendments, I am transmitting (i) clean and blackline copies of the amended rules along with committee notes; (ii) an excerpt from the September 2024 report of the Committee on Rules of Practice and Procedure to the Judicial Conference; and (iii) an excerpt from the May 2024 report of the Advisory Committee on Appellate Rules.

Attachments

00021

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF APPELLATE PROCEDURE¹**

- 1 **Rule 6. Appeal in a Bankruptcy Case or**
 2 **Proceeding**
- 3 **(a) Appeal From a Judgment, Order, or Decree of a**
 4 **District Court Exercising Original Jurisdiction in**
 5 **a Bankruptcy Case or Proceeding. An appeal to a**
 6 court of appeals from a final judgment, order, or
 7 decree of a district court exercising original
 8 jurisdiction in a bankruptcy case or proceeding under
 9 28 U.S.C. § 1334 is taken as any other civil appeal
 10 under these rules. But the reference in
 11 Rule 4(a)(4)(A) to the time allowed for motions
 12 under certain Federal Rules of Civil Procedure must
 13 be read as a reference to the time allowed for the
 14 equivalent motions under the applicable Federal

¹ New material is underlined; matter to be omitted is lined through.

2 FEDERAL RULES OF APPELLATE PROCEDURE

15 Rules of Bankruptcy Procedure, which may be
 16 shorter than the time allowed under the Civil Rules.

17 (b) **Appeal From a Judgment, Order, or Decree of a**
 18 **District Court or Bankruptcy Appellate Panel**
 19 **Exercising Appellate Jurisdiction in a**
 20 **Bankruptcy Case or Proceeding.**

21 (1) **Applicability of Other Rules.** These rules
 22 apply to an appeal to a court of appeals under
 23 28 U.S.C. § 158(d)(1) from a final judgment,
 24 order, or decree of a district court or
 25 bankruptcy appellate panel exercising
 26 appellate jurisdiction in a bankruptcy case or
 27 proceeding under 28 U.S.C. § 158(a) or (b),
 28 but with these qualifications:

29 * * * * *

30 (C) when the appeal is from a bankruptcy
 31 appellate panel, “district court,” as

32 used in any applicable rule, means
33 “bankruptcy appellate panel”; and

34 * * * * *

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

38 (A) **Motion for Rehearing.**

39 * * * * *

40 (ii) If a party intends to challenge
41 the order disposing of the
42 motion—or the alteration or
43 amendment of a judgment,
44 order, or decree upon the
45 motion—then the party, in
46 compliance accordance with
47 Rules 3(c) and 6(b)(1)(B),
48 must file a notice of appeal or
49 amended notice of appeal.

50 The notice or amended notice
51 must be filed within the time
52 prescribed by Rule 4—
53 excluding Rules 4(a)(4) and
54 4(b)—measured from the
55 entry of the order disposing of
56 the motion.

57 * * * * *

58 (C) **Making the Record Available.**

59 * * * * *

60 (ii) All parties must do whatever
61 else is necessary to enable the
62 clerk to assemble the record
63 and make it available. When
64 the record is made available in
65 paper form, the court of
66 appeals may provide by rule
67 or order that a certified copy

68 of the docket entries be made
69 available in place of the
70 redesignated record. But at
71 any time during the appeal's
72 pendency, any party may
73 request at any time during the
74 pendency of the appeal that
75 the redesignated record be
76 made available.

77 (D) **Filing the Record.** When the district
78 clerk or bankruptcy-appellate-panel
79 clerk has made the record available,
80 the circuit clerk must note that fact on
81 the docket. The date as noted ~~on the~~
82 ~~docket~~ serves as the filing date of the
83 record. The circuit clerk must
84 immediately notify all parties of that
85 ~~the filing date~~.

86 (c) **Direct Appeal Review from a Judgment, Order,**
87 **or Decree of a Bankruptcy Court by Permission**
88 **Authorization Under 28 U.S.C. § 158(d)(2).**

89 (1) **Applicability of Other Rules.** These rules
90 apply to a direct appeal from a judgment,
91 order, or decree of a bankruptcy court by
92 permission authorization under 28 U.S.C.
93 § 158(d)(2), but with these qualifications:

94 (A) Rules 3–4, 5(a)(3) (except as
95 provided in this Rule 6(c)), 6(a), 6(b),
96 8(a), 8(c), 9–12, 13–20, 22–23, and
97 24(b) do not apply; and

98 (B) as used in any applicable rule,
99 “district court” or “district clerk”
100 includes—to the extent appropriate—
101 a bankruptcy court or bankruptcy
102 appellate panel or its clerk; and

103 ~~(C) the reference to “Rules 11 and~~
104 ~~12(e)” in Rule 5(d)(3) must be read~~
105 ~~as a reference to Rules 6(e)(2)(B) and~~
106 ~~(C).~~

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

110 (A) **Petition to Authorize a Direct**
111 **Appeal.** Within 30 days after a
112 certification of a bankruptcy court’s
113 order for direct appeal to the court of
114 appeals under 28 U.S.C. § 158(d)(2)
115 becomes effective under Bankruptcy
116 Rule 8006(a), any party to the appeal
117 may ask the court of appeals to
118 authorize a direct appeal by filing a
119 petition with the circuit clerk under
120 Bankruptcy Rule 8006(g).

- 121 (B) Contents of the Petition. The
122 petition must include the material
123 required by Rule 5(b)(1) and an
124 attached copy of:
125 (i) the certification; and
126 (ii) the notice of appeal of the
127 bankruptcy court's judgment,
128 order, or decree filed under
129 Bankruptcy Rule 8003 or
130 8004.
- 131 (C) Answer or Cross-Petition; Oral
132 Argument. Rule 5(b)(2) governs an
133 answer or cross-petition. Rule 5(b)(3)
134 governs oral argument.
- 135 (D) Form of Papers; Number of
136 Copies; Length Limits. Rule 5(c)
137 governs the required form, number of
138 copies to be filed, and length limits

139 applicable to the petition and any
140 answer or cross-petition.

141 **(E) Notice of Appeal; Calculating**
142 **Time.** A notice of appeal to the court
143 of appeals need not be filed. The date
144 when the order authorizing the direct
145 appeal is entered serves as the date of
146 the notice of appeal for calculating
147 time under these rules.

148 **(F) Notification of the Order**
149 **Authorizing Direct Appeal; Fees;**
150 **Docketing the Appeal.**

151 **(i)** When the court of appeals
152 enters the order authorizing
153 the direct appeal, the circuit
154 clerk must notify the
155 bankruptcy clerk and the
156 district court clerk or

157 bankruptcy-appellate-panel
158 clerk of the entry.
159 (ii) Within 14 days after the order
160 authorizing the direct appeal
161 is entered, the appellant must
162 pay the bankruptcy clerk any
163 unpaid required fee,
164 including:
165 • the fee required for the
166 appeal to the district court
167 or bankruptcy appellate
168 panel; and
169 • the difference between the
170 fee for an appeal to the
171 district court or
172 bankruptcy appellate
173 panel and the fee required

174 for an appeal to the court
175 of appeals.
176 (iii) The bankruptcy clerk must
177 notify the circuit clerk once
178 the appellant has paid all
179 required fees. Upon receiving
180 the notice, the circuit clerk
181 must enter the direct appeal on
182 the docket.
183 (G) Stay Pending Appeal. Bankruptcy
184 Rule 8007 governs any stay pending
185 appeal.
186 (A)(H) The Record on Appeal. Bankruptcy
187 Rule 8009 governs the record on
188 appeal. If a party has already filed a
189 document or completed a step
190 required to assemble the record for
191 the appeal to the district court or

192 bankruptcy appellate panel, the party
193 need not repeat that filing or step.
194 ~~(B)~~(I) **Making the Record Available.**
195 Bankruptcy Rule 8010 governs
196 completing the record and making it
197 available. When the court of appeals
198 enters the order authorizing the direct
199 appeal, the bankruptcy clerk must
200 make the record available to the
201 circuit clerk.
202 ~~(C)~~ **Stays Pending Appeal.** ~~Bankruptcy~~
203 ~~Rule 8007 applies to stays pending~~
204 ~~appeal.~~
205 ~~(D)~~(J) **Duties of the Circuit Clerk.** When
206 the bankruptcy clerk has made the
207 record available, the circuit clerk
208 must note that fact on the docket. The
209 date as noted on the docket serves as

April 2025: Before this package was sent to Congress, at line 217 a comma, shown as struck out, was added after "to appeal."

FEDERAL RULES OF APPELLATE PROCEDURE 13

210 the filing date of the record. The
211 circuit clerk must immediately notify
212 all parties of that the filing date.

213 ~~(E)~~(K) **Filing a Representation Statement.**

214 Unless the court of appeals designates
215 another time, within 14 days after
216 entry of the order ~~granting permission~~
217 ~~to appeal, authorizing the direct appeal~~
218 ~~is entered, the attorney for each party~~
219 ~~to the appeal the attorney who sought~~
220 ~~permission~~ must file a statement with
221 the circuit clerk naming the parties
222 that the attorney represents on appeal.

223 **Committee Note**

224 **Subdivision (a).** Minor stylistic and clarifying
225 changes are made to subdivision (a). In addition, subdivision
226 (a) is amended to clarify that, when a district court is
227 exercising original jurisdiction in a bankruptcy case or
228 proceeding under 28 U.S.C. § 1334, the time in which to file
229 post-judgment motions that can reset the time to appeal
230 under Rule 4(a)(4)(A) is controlled by the Federal Rules of

231 Bankruptcy Procedure, rather than the Federal Rules of Civil
232 Procedure.

233 The Bankruptcy Rules partially incorporate the
234 relevant Civil Rules but in some instances shorten the
235 deadlines for motions set out in the Civil Rules. *See* Fed. R.
236 Bankr. P. 9015(c) (any renewed motion for judgment under
237 Civil Rule 50(b) must be filed within 14 days of entry of
238 judgment); Fed. R. Bankr. P. 7052 (any motion to amend or
239 make additional findings under Civil Rule 52(b) must be
240 filed within 14 days of entry of judgment); Fed. R. Bankr. P.
241 9023 (any motion to alter or amend the judgment or for a
242 new trial under Civil Rule 59 must be filed within 14 days
243 of entry of judgment).

244 Motions for attorney's fees in bankruptcy cases or
245 proceedings are governed by Bankruptcy
246 Rule 7054(b)(2)(A), which incorporates without change the
247 14-day deadline set in Civil Rule 54(d)(2)(B). Under
248 Appellate Rule 4(a)(4)(A)(iii), such a motion resets the time
249 to appeal only if the district court so orders pursuant to Civil
250 Rule 58(e), which is made applicable to bankruptcy cases
251 and proceedings by Bankruptcy Rule 7058.

252 Motions for relief under Civil Rule 60 in bankruptcy
253 cases or proceedings are governed by Bankruptcy
254 Rule 9024. Appellate Rule 4(a)(4)(A)(vi) provides that a
255 motion for relief under Civil Rule 60 resets the time to
256 appeal only if the motion is made within the time allowed
257 for filing a motion under Civil Rule 59. In a bankruptcy case
258 or proceeding, motions under Civil Rule 59 are governed by
259 Bankruptcy Rule 9023, which, as noted above, requires such
260 motions to be filed within 14 days of entry of judgment.

Civil Rule	Bankruptcy Rule	Time Under Bankruptcy Rule
50(b)	9015(c)	14 days
52(b)	7052	14 days
59	9023	14 days
54(d)(2)(B)	7054(b)(2)(A)	14 days
60	9024	14 days

261 Of course, the Bankruptcy Rules may be amended in
 262 the future. If that happens, the time allowed for the
 263 equivalent motions under the applicable Bankruptcy Rule
 264 may change.

265 **Subdivision (b).** Minor stylistic and clarifying
 266 changes are made to the header of subdivision (b) and to
 267 subdivision (b)(1). Subdivision (b)(1)(C) is amended to
 268 correct the omission of the word “bankruptcy” from the
 269 phrase “bankruptcy appellate panel.” Stylistic changes are
 270 made to subdivision (b)(2).

271 **Subdivision (c).** Subdivision (c) was added to Rule 6
 272 in 2014 to set out procedures governing discretionary direct
 273 appeals from orders, judgments, or decrees of the bankruptcy
 274 court to the court of appeals under 28 U.S.C. § 158(d)(2).

275 Typically, an appeal from an order, judgment, or
 276 decree of a bankruptcy court may be taken either to the
 277 district court for the relevant district or, in circuits that have
 278 established bankruptcy appellate panels, to the bankruptcy
 279 appellate panel for that circuit. 28 U.S.C. § 158(a). Final
 280 orders of the district court or bankruptcy appellate panel
 281 resolving appeals under § 158(a) are then appealable as of
 282 right to the court of appeals under § 158(d)(1).

283 That two-step appeals process can be redundant and
 284 time-consuming and could in some circumstances

285 potentially jeopardize the value of a bankruptcy estate by
286 impeding quick resolution of disputes over disposition of
287 estate assets. In the Bankruptcy Abuse Prevention and
288 Consumer Protection Act of 2005, Congress enacted 28
289 U.S.C. § 158(d)(2) to provide that, in certain circumstances,
290 appeals may be taken directly from orders of the bankruptcy
291 court to the courts of appeals, bypassing the intervening
292 appeal to the district court or bankruptcy appellate panel.

293 Specifically, § 158(d)(2) grants the court of appeals
294 jurisdiction of appeals from any order, judgment, or decree
295 of the bankruptcy court if (a) the bankruptcy court, the
296 district court, the bankruptcy appellate panel, or all parties to
297 the appeal certify that (1) “the judgment, order, or decree
298 involves a question of law as to which there is no controlling
299 decision of the court of appeals for the circuit or of the
300 Supreme Court of the United States, or involves a matter of
301 public importance”; (2) “the judgment, order, or decree
302 involves a question of law requiring resolution of conflicting
303 decisions”; or (3) “an immediate appeal from the judgment,
304 order, or decree may materially advance the progress of the
305 case or proceeding in which the appeal is taken” and (b) “the
306 court of appeals authorizes the direct appeal of the judgment,
307 order, or decree.” 28 U.S.C. § 158(d)(2).

308 Bankruptcy Rule 8006 governs the procedures for
309 certification of a bankruptcy court order for direct appeal to
310 the court of appeals. Among other things, Rule 8006
311 provides that, to become effective, the certification must be
312 filed in the appropriate court, the appellant must file a notice
313 of appeal of the bankruptcy court order to the district court
314 or bankruptcy appellate panel, and the notice of appeal must
315 become effective. Fed. R. Bankr. P. 8006(a). Once the
316 certification becomes effective under Rule 8006(a), a
317 petition seeking authorization of the direct appeal must be
318 filed with the court of appeals within 30 days. *Id.* 8006(g).

319 Rule 6(c) governs the procedures applicable to a
320 petition for authorization of a direct appeal and, if the court
321 of appeals grants the petition, the initial procedural steps
322 required to prosecute the direct appeal in the court of
323 appeals.

324 As promulgated in 2014, Rule 6(c) incorporated by
325 reference most of Rule 5, which governs petitions for
326 permission to appeal to the court of appeals from otherwise
327 non-appealable district court orders. It has become evident
328 over time, however, that Rule 5 is not a perfect fit for direct
329 appeals of bankruptcy court orders to the courts of appeals.
330 The primary difference is that Rule 5 governs discretionary
331 appeals from district court orders that are otherwise non-
332 appealable, and an order granting a petition for permission
333 to appeal under Rule 5 thus initiates an appeal that otherwise
334 would not occur. By contrast, an order granting a petition to
335 authorize a direct appeal under Rule 6(c) means that an
336 appeal that has already been filed and is pending in the
337 district court or bankruptcy appellate panel will instead be
338 heard in the court of appeals. As a result, it is not always
339 clear precisely how to apply the provisions of Rule 5 to a
340 Rule 6(c) direct appeal.

341 The new amendments to Rule 6(c) are intended to
342 address that problem by making Rule 6(c) self-contained.
343 Thus, Rule 6(c)(1) is amended to provide that Rule 5 is not
344 applicable to Rule 6(c) direct appeals except as specified in
345 Rule 6(c) itself. Rule 6(c)(2) is also amended to include the
346 substance of applicable provisions of Rule 5, modified to
347 apply more clearly to Rule 6(c) direct appeals. In addition,
348 stylistic and clarifying amendments are made to conform to
349 other provisions of the Appellate Rules and Bankruptcy
350 Rules and to ensure that all the procedures governing direct
351 appeals of bankruptcy court orders are as clear as possible to
352 both courts and practitioners.

353 **Subdivision (c)—Title.** The title of subdivision (c)
 354 is amended to change “Direct Review” to “Direct Appeal”
 355 and “Permission” to “Authorization,” to be consistent with
 356 the language of 28 U.S.C. § 158(d)(2). In addition, the
 357 language “from a Judgment, Order, or Decree of a
 358 Bankruptcy Court” is added for clarity and to be consistent
 359 with other subdivisions of Rule 6.

360 **Subdivision (c)(1).** The language of the first
 361 sentence is amended to be consistent with the title of
 362 subdivision (c). In addition, the list of rules in subdivision
 363 (c)(1)(A) that are inapplicable to direct appeals is modified
 364 to include Rule 5, except as provided in subdivision (c) itself.
 365 Subdivision (c)(1)(C), which modified certain language in
 366 Rule 5 in the context of direct appeals, is therefore deleted.
 367 As set out in more detail below, the provisions of Rule 5 that
 368 are applicable to direct appeals have been added, with
 369 appropriate modifications to take account of the direct
 370 appeal context, as new provisions in subdivision (c)(2).

371 **Subdivision (c)(2).** The language “to the rules made
 372 applicable by (c)(1)” is added to the first sentence for
 373 consistency with other subdivisions of Rule 6.

374 **Subdivision (c)(2)(A).** Subdivision (c)(2)(A) is a
 375 new provision that sets out the basic procedure and timeline
 376 for filing a petition to authorize a direct appeal in the court
 377 of appeals. It is intended to be substantively identical to
 378 Bankruptcy Rule 8006(g), with minor stylistic changes made
 379 in light of the context of the Appellate Rules.

380 **Subdivision (c)(2)(B).** Subdivision (c)(2)(B) is a
 381 new provision that specifies the contents of a petition to
 382 authorize a direct appeal. It provides that, in addition to the
 383 material required by Rule 5, the petition must include an
 384 attached copy of the certification under § 158(d)(2) and a

385 copy of the notice of appeal to the district court or
386 bankruptcy appellate panel.

387 **Subdivision (c)(2)(C).** Subdivision (c)(2)(C) is a
388 new provision. For clarity, it specifies that answers or cross-
389 petitions are governed by Rule 5(b)(2) and oral argument is
390 governed by Rule 5(b)(3).

391 **Subdivision (c)(2)(D).** Subdivision (c)(2)(D) is a
392 new provision. For clarity, it specifies that the required form,
393 number of copies to be filed, and length limits applicable to
394 the petition and any answer or cross-petition are governed
395 by Rule 5(c).

396 **Subdivision (c)(2)(E).** Subdivision (c)(2)(E) is a
397 new provision that incorporates the substance of
398 Rule 5(d)(2), modified to take into account that the appellant
399 will already have filed a notice of appeal to the district court
400 or bankruptcy appellate panel. It makes clear that a second
401 notice of appeal to the court of appeals need not be filed, and
402 that the date of entry of the order authorizing the direct
403 appeal serves as the date of the notice of appeal for the
404 purpose of calculating time under the Appellate Rules.

405 **Subdivision (c)(2)(F).** Subdivision (c)(2)(F) is a new
406 provision. It largely incorporates the substance of
407 Rules 5(d)(1)(A) and 5(d)(3), with some modifications.

408 Subdivision (c)(2)(F)(i) now requires that when the
409 court of appeals enters an order authorizing a direct appeal,
410 the circuit clerk must notify the bankruptcy clerk and the
411 clerk of the district court or the clerk of the bankruptcy
412 appellate panel of the order.

413 Subdivision (c)(2)(F)(ii) requires that, within 14 days
414 of entry of the order authorizing the direct appeal, the
415 appellant must pay the bankruptcy clerk any required filing

416 or docketing fees that have not yet been paid. Thus, if the
417 appellant has not yet paid the required fee for the initial
418 appeal to the district court or bankruptcy appellate panel, the
419 appellant must do so. In addition, the appellant must pay the
420 bankruptcy clerk the difference between the fee for the
421 appeal to the district court or bankruptcy appellate panel and
422 the fee for an appeal to the court of appeals, so that the
423 appellant has paid the full fee required for an appeal to the
424 court of appeals.

425 Subdivision (c)(2)(F)(iii) then requires the
426 bankruptcy clerk to notify the circuit clerk that all fees have
427 been paid, which triggers the circuit clerk's duty to docket
428 the direct appeal.

429 **Subdivision (c)(2)(G).** Subdivision (c)(2)(G) was
430 formerly subdivision (c)(2)(C). It is substantively
431 unchanged, continuing to provide that Bankruptcy
432 Rule 8007 governs stays pending appeal, but reflects minor
433 stylistic revisions.

434 **Subdivision (c)(2)(H).** Subdivision (c)(2)(H) was
435 formerly subdivision (c)(2)(A). It continues to provide that
436 Bankruptcy Rule 8009 governs the record on appeal, but
437 adds a sentence clarifying that steps taken to assemble the
438 record under Bankruptcy Rule 8009 before the court of
439 appeals authorizes the direct appeal need not be repeated
440 after the direct appeal is authorized.

441 **Subdivision (c)(2)(I).** Subdivision (c)(2)(I) was
442 formerly subdivision (c)(2)(B). It continues to provide that
443 Bankruptcy Rule 8010 governs provision of the record to the
444 court of appeals. It adds a sentence clarifying that when the
445 court of appeals authorizes the direct appeal, the bankruptcy
446 clerk must make the record available to the court of appeals.

447 **Subdivision (c)(2)(J).** Subdivision (c)(2)(J) was
448 formerly subdivision (c)(2)(D). It is unchanged other than a
449 stylistic change and being renumbered.

450 **Subdivision (c)(2)(K).** Subdivision (c)(2)(K) was
451 formerly subdivision (c)(2)(E). Because any party may file a
452 petition to authorize a direct appeal, it is modified to provide
453 that the attorney for each party—rather than only the
454 attorney for the party filing the petition—must file a
455 representation statement. In addition, the phrase “granting
456 permission to appeal” is changed to “authorizing the direct
457 appeal” to conform to the language used throughout the rest
458 of subdivision (c), and a stylistic change is made.

PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF APPELLATE PROCEDURE¹

- 1 **Rule 39. Costs**
- 2 **(a) ~~Against Whom Assessed~~ Allocating Costs Among**
- 3 **the Parties**. The following rules apply to allocating
- 4 taxable costs among the parties unless the law
- 5 provides, the parties agree, or the court orders
- 6 otherwise:
- 7 (1) if an appeal is dismissed, costs are ~~taxed~~
- 8 allocated against the appellant, ~~unless the~~
- 9 ~~parties agree otherwise;~~
- 10 (2) if a judgment is affirmed, costs are ~~taxed~~
- 11 allocated against the appellant;
- 12 (3) if a judgment is reversed, costs are ~~taxed~~
- 13 allocated against the appellee;

¹ New material is underlined; matter to be omitted is
lined through.

2 FEDERAL RULES OF APPELLATE PROCEDURE

14 (4) if a judgment is affirmed in part, reversed in
15 part, modified, or vacated, each party bears
16 its own costs-costs are taxed only as the court
17 orders.

18 **(b) Reconsideration.** Once the allocation of costs is
19 established by the entry of judgment, a party may
20 seek reconsideration of that allocation by filing a
21 motion in the court of appeals within 14 days after
22 the entry of judgment. But issuance of the mandate
23 under Rule 41 must not be delayed awaiting a
24 determination of the motion. The court of appeals
25 retains jurisdiction to decide the motion after the
26 mandate issues.

27 **(c) Costs Governed by Allocation Determination.** The
28 allocation of costs applies both to costs taxable in the
29 court of appeals under Rule 39(e) and to costs taxable
30 in district court under Rule 39(f).

31 ~~(b)(d)~~ **Costs For and Against the United States.** Costs for
32 or against the United States, its agency, or officer
33 will be assessed allocated under Rule 39(a) only if
34 authorized by law.

35 **(e) Costs on Appeal Taxable in the Court of Appeals.**

36 **(1) Costs Taxable.** The following costs on
37 appeal are taxable in the court of appeals for
38 the benefit of the party entitled to costs:

39 **(A) the production of necessary copies of**
40 **a brief or appendix, or copies of**
41 **records authorized by Rule 30(f);**

42 **(B) the docketing fee; and**

43 **(C) a filing fee paid in the court of**
44 **appeals.**

45 **(e) (2) Costs of Copies.** Each court of appeals must,
46 by local rule, set fix the maximum rate for
47 taxing the cost of producing necessary copies
48 of a brief or appendix, or copies of records

49 authorized by Rule 30(f). The rate must not
50 exceed that generally charged for such work
51 in the area where the clerk's office is located
52 and should encourage economical methods of
53 copying.

54 ~~(d)~~ (3) Bill of Costs: Objections; Insertion in
55 Mandate.

56 ~~(1)~~ (A) A party who wants costs taxed in the
57 court of appeals must—within 14
58 days after ~~entry of~~ judgment is
59 entered—file with the circuit clerk
60 and serve an itemized and verified bill
61 of those costs.

62 ~~(2)~~ (B) Objections must be filed within 14
63 days after ~~service of~~ the bill of costs
64 is served, unless the court extends the
65 time.

66 ~~(3)~~ (C) The clerk must prepare and certify an
 67 itemized statement of costs for
 68 insertion in the mandate, but issuance
 69 of the mandate must not be delayed
 70 for taxing costs. If the mandate issues
 71 before costs are finally determined,
 72 the district clerk must—upon the
 73 circuit clerk’s request—add the
 74 statement of costs, or any amendment
 75 of it, to the mandate.

76 **~~(e)~~(f) Costs on Appeal Taxable in the District Court.**

77 The following costs on appeal are taxable in the
 78 district court for the benefit of the party entitled to
 79 ~~costs under this rule:~~

80 * * * * *

81 **Committee Note**

82 In *City of San Antonio v. Hotels.com*, 141 S. Ct. 1628
 83 (2021), the Supreme Court held that Rule 39 does not permit
 84 a district court to alter a court of appeals’ allocation of the
 85 costs listed in subdivision (e) of that Rule. The Court also

86 observed that “the current Rules and the relevant statutes
87 could specify more clearly the procedure that such a party
88 should follow to bring their arguments to the court of
89 appeals....” *Id.* at 1638. The amendment does so. Stylistic
90 changes are also made.

91 **Subdivision (a).** Both the heading and the body of
92 the Rule are amended to clarify that allocation of the costs
93 among the parties is done by the court of appeals. The court
94 may allow the default rules specified in subdivision (a) to
95 operate based on the judgment, or it may allocate them
96 differently based on the equities of the situation. Subdivision
97 (a) is not concerned with calculating the amounts owed; it is
98 concerned with who bears those costs, and in what
99 proportion. The amendment also specifies a default for
100 mixed judgments: each party bears its own costs.

101 **Subdivision (b).** The amendment specifies a
102 procedure for a party to ask the court of appeals to reconsider
103 the allocation of costs established pursuant to subdivision
104 (a). A party may do so by motion in the court of appeals
105 within 14 days after the entry of judgment. The mandate is
106 not stayed pending resolution of this motion, but the court of
107 appeals retains jurisdiction to decide the motion after the
108 mandate issues.

109 **Subdivision (c).** Codifying the decision in
110 *Hotels.com*, the amendment also makes clear that the
111 allocation of costs by the court of appeals governs the
112 taxation of costs both in the court of appeals and in the
113 district court.

114 **Subdivision (d).** The amendment uses the word
115 “allocated” to match subdivision (a).

116 **Subdivision (e).** The amendment specifies which
117 costs are taxable in the court of appeals and clarifies that the
118 procedure in that subdivision governs the taxation of costs
119 taxable in the court of appeals. The docketing fee, currently
120 \$500, is established by the Judicial Conference of the United
121 States pursuant to 28 U.S.C. § 1913. The reference to filing
122 fees paid in the court of appeals is not a reference to the \$5
123 fee paid to the district court required by 28 U.S.C. § 1917 for
124 filing a notice of appeal from the district court to the court of
125 appeals. Instead, the reference is to filing fees paid in the
126 court of appeals, such as the fee to file a notice of appeal
127 from a bankruptcy appellate panel.

128 **Subdivision (f).** The provisions governing costs
129 taxable in the district court are lettered (f) rather than (e).
130 The filing fee referred to in this subdivision is the \$5 fee
131 required by 28 U.S.C. § 1917 for filing a notice of appeal
132 from the district court to the court of appeals.

Excerpt from the September 2024 Report of the Committee on Rules of Practice and Procedure

Agenda E-19
Rules
September 2024

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:

The Committee on Rules of Practice and Procedure (Standing Committee or Committee) met on June 4, 2024. All members participated.

* * * * *

FEDERAL RULES OF APPELLATE PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Appellate Rules recommended for final approval proposed amendments to Appellate Rules 6 and 39. The Standing Committee unanimously approved the Advisory Committee's recommendations, with minor stylistic changes to each rule.

Rule 6 (Appeal in a Bankruptcy Case)

The proposed amendments to Rule 6 make changes to Rule 6(a) (dealing with appeals from judgments of a district court exercising original jurisdiction in a bankruptcy case) to clarify the time limits for post-judgment motions in bankruptcy cases and Rule 6(c) (dealing with direct appeals from bankruptcy court to the court of appeals) to clarify the procedures for direct appeals. The amendments also make stylistic changes to those provisions and to Rule 6(b) (dealing with appeals from a district court or bankruptcy appellate panel exercising appellate jurisdiction in a bankruptcy case). The proposed amendments to Rule 6(a) clarify the time for filing certain motions that reset the time to appeal in cases where a district court is exercising

NOTICE

NO RECOMMENDATIONS PRESENTED HEREIN REPRESENT THE POLICY OF THE JUDICIAL CONFERENCE
UNLESS APPROVED BY THE CONFERENCE ITSELF.

Excerpt from the September 2024 Report of the Committee on Rules of Practice and Procedure

original jurisdiction in a bankruptcy case. The proposed amendments provide that the reference in Appellate Rule 4(a)(4)(A) to the time allowed for motions under certain Federal Rules of Civil Procedure must be read in such cases as a reference to the time allowed for the equivalent motions under the applicable Federal Rules of Bankruptcy Procedure. The proposed amendments to Rule 6(c) clarify the procedure for handling direct appeals from a bankruptcy court to a court of appeals under 28 U.S.C. § 158(d)(2), providing more detail about how parties should handle initial procedural steps in the court of appeals once authorization for a direct appeal is granted. The Rule 6(c) amendments dovetail with the proposed amendment to Bankruptcy Rule 8006(g) described later in this report.

Rule 39 (Costs on Appeal)

The proposed amendments are in response to the Supreme Court's holding in *City of San Antonio v. Hotels.com*, 141 S. Ct. 1628 (2021). In that case, the Court held that Rule 39, which governs costs on appeal, does not permit a district court to alter a court of appeals' allocation of costs, even those costs that are taxed by the district court.

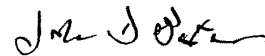
The proposed amendments clarify the distinction between (1) the court of appeals deciding which parties must bear the costs and, if appropriate, in what percentages and (2) the court of appeals, the district court, or the clerk of either court calculating and taxing the dollar amount of costs upon the proper party or parties. In addition, the proposed amendments codify the holding in *Hotels.com*, providing that the allocation of costs by the court of appeals applies to both the costs taxable in the court of appeals and the costs taxable in the district court, and establish a clearer procedure that a party should follow if it wants to ask the court of appeals to reconsider the allocation of costs. Finally, the proposed amendments clarify and improve Rule 39's parallel structure.

Excerpt from the September 2024 Report of the Committee on Rules of Practice and Procedure

Recommendation: That the Judicial Conference approve the proposed amendments to Appellate Rules 6 and 39, as set forth in Appendix A, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

* * * * *

Respectfully submitted,



John D. Bates, Chair

Paul Barbadoro	Lisa O. Monaco
Elizabeth J. Cabraser	Andrew J. Pincus
Louis A. Chaiten	D. Brooks Smith
William J. Kayatta, Jr.	Kosta Stojilkovic
Edward M. Mansfield	Jennifer G. Zipps
Troy A. McKenzie	
Patricia Ann Millett	

* * * * *

Excerpt from the May 13, 2024 Report of the Advisory Committee on Appellate Rules

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

JOHN D. BATES
CHAIR

H. THOMAS BYRON III
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

JAY S. BYBEE
APPELLATE RULES

REBECCA B. CONNELLY
BANKRUPTCY RULES

ROBIN L. ROSENBERG
CIVIL RULES

JAMES C. DEVER III
CRIMINAL RULES

PATRICK J. SCHILTZ
EVIDENCE RULES

MEMORANDUM

TO: Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Jay Bybee, Chair
Advisory Committee on Appellate Rules

RE: Report of the Advisory Committee on Appellate Rules*

DATE: May 13, 2024

I. Introduction

The Advisory Committee on the Appellate Rules met on Wednesday, April 10, 2024, in Denver, Colorado. * * *

The Advisory Committee seeks final approval of amendments to Rule 39, dealing with costs, and Rule 6, dealing with appeals in bankruptcy cases. These

* A copy of the full committee report can be found in the June 2024 Standing Committee agenda book publicly available on www.uscourts.gov.

Excerpt from the May 13, 2024 Report of the Advisory Committee on Appellate Rules

amendments were published for public comment in August of 2023, and the Advisory Committee recommends final approval as published. (Part II of this report.)

* * * * *

II. Action Items for Final Approval

A. Costs on Appeal (21-AP-D)

In the spring of 2021, the Supreme Court held that Rule 39, which governs costs on appeal, does not permit a district court to alter a court of appeals' allocation of costs, even those costs that are taxed by the district court. *City of San Antonio v. Hotels.com*, 141 S. Ct. 1628 (2021). The Court also observed that "the current Rules and the relevant statutes could specify more clearly the procedure that such a party should follow to bring their arguments to the court of appeals." *Id.* at 1638.

That fall, the Advisory Committee appointed a subcommittee to examine the issue, and, in June of 2023, the Standing Committee approved publication of proposed amendments to Rule 39. The proposed amended rule is included with this report in Attachment A. The Advisory Committee seeks final approval as published.

The amended Rule is designed to accomplish several things:

First, it clarifies the distinction between (1) the court of appeals deciding which parties must bear the costs and, if appropriate, in what percentages and (2) the court of appeals, the district court (or the clerk of either) calculating and taxing the dollar amount of costs upon the proper party or parties. It uses the term "allocated" for the former and the term "taxed" for the latter. Rule 39(a) establishes default rules for the allocation of costs; these default rules can be displaced by party agreement or court order.

Second, it codifies the holding in *Hotels.com*, providing that the allocation of costs by the court of appeals applies to both the costs taxable in the court of appeals and the costs taxable in the district court.

Third, it responds to the need identified in *Hotels.com* for a clearer procedure that a party should follow if it wants to ask the court of appeals to reconsider the allocation of costs. It does this by providing for a motion for reconsideration of the allocation. To prevent delay, it provides that the mandate must not be delayed while awaiting determination of such a motion for reconsideration while making clear that the court of appeals retains jurisdiction to decide the motion.

Fourth, it makes Rule 39's structure more parallel. The current Rule lists the costs taxable in the district court but not the costs taxable in the court of appeals. The proposed amendment lists the costs taxable in the court of appeals.

Excerpt from the May 13, 2024 Report of the Advisory Committee on Appellate Rules

The proposal does not, however, have a mechanism for making the judgment winner in the district court aware of the magnitude of the costs it might face under Rule 39 (or even the obligation to pay such costs) early enough to ask the court of appeals to reallocate the costs. While most costs on appeal are so modest that this is not a serious concern, one such cost—the premium paid for a supersedeas bond—can run into the millions of dollars. In our report requesting publication, the Appellate Rules Committee noted that it believed that the easiest time for disclosure is when the bond is before the district court for approval and had requested the Advisory Committee on Civil Rules to consider amending Civil Rule 62 to require that disclosure.

The Advisory Committee received three comments. Two of them are positive; one is negative.

The Minnesota State Bar Association's Assembly, its policy-making body, voted to support the proposed rule. The Committee on Appellate Courts of the California Lawyers Association's Litigation Section "believes that the proposal provides clarity to courts and practitioners regarding the respective authority of circuit courts and district courts to allocate and tax costs," and "cogently addresses the issues regarding FRAP 39 raised" by the Supreme Court in *Hotels.com*. And it "agrees that the Rules Committee should explore an amendment to Federal Rules of Civil Procedure 62."

Andrew Straw suggested that no costs should be allocated against a party who was allowed to proceed in forma pauperis. However, the IFP statute provides, "Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings," 28 U.S.C. § 1915(f)(1).

The Advisory Committee does not believe that these public comments warrant any changes to the proposed amendments. Instead, it unanimously recommends final approval of the proposed amendments as published.¹

In addition, it notes that, to the extent there are reasons not to amend Civil Rule 62(b) to require disclosure of the premium paid for a supersedeas bond, perhaps the Advisory Committee on Civil Rules might consider adding a cross-reference to Appellate Rule 39 in Civil Rule 62(b) so that litigants seeking district court approval of a supersedeas bond are alerted to this possibility.

¹ After the meeting of the Advisory Committee, an additional comment was submitted and docketed as a new suggestion. This comment was circulated to the members of the Advisory Committee with a question whether any member wanted to reopen the matter. None did.

Excerpt from the May 13, 2024 Report of the Advisory Committee on Appellate Rules

B. Appeals in Bankruptcy Cases (no number assigned)

These proposed amendments to Rule 6, dealing with appeals in bankruptcy cases, arose from requests by the Advisory Committee on Bankruptcy Rules. In June of 2023, the Standing Committee approved publication of proposed amendments to Rule 6. * * * The Advisory Committee seeks final approval as published.

The proposed amendments address two different concerns.

Resetting Time to Appeal

The first concern involves resetting the time to appeal in cases where a district court is exercising original jurisdiction in a bankruptcy case. Federal Rule of Appellate Procedure 4(a)(4)(A) resets the time to appeal if various post-judgment motions are timely made in the district court. To be timely in an ordinary civil case, the motion must be made within 28 days of the judgment. Fed. R. Civ. P. 50(b), 52(b), 59. But in a bankruptcy case, the equivalent motions must be made within 14 days of the judgment. Fed. R. Bankr. P. 7052, 9015(c), 9023.

So what happens if a district court itself—rather than a bankruptcy court—decides a bankruptcy proceeding in the first instance and a post-judgment motion is made on the 20th day after judgment? Does the motion have resetting effect or not?

The proposed amendment to Appellate Rule 6(a)—the rule that deals with bankruptcy appeals where the district court exercised original jurisdiction—makes clear that it does not. It provides that the reference in Appellate Rule 4(a)(4)(A) to the time allowed for motions under certain Federal Rules of Civil Procedure must be read in such cases as a reference to the time allowed for the equivalent motions under the applicable Federal Rule of Bankruptcy Procedure. And it warns that this time may be shorter than the time allowed under the Civil Rules. The Committee Note provides a table of the equivalent motions and the time allowed under the current version of the applicable Bankruptcy Rules.

Direct Appeals

The second concern involves direct appeals in bankruptcy cases. Appeals in bankruptcy are governed by 28 U.S.C. § 158. The default rule for appeals from an order of the bankruptcy court is that such appeals go either to the district court for the district where the bankruptcy court is located or (in the circuits that have established a bankruptcy appellate panel (BAP)) to the BAP for that circuit. Under § 158, the losing party then has a further appeal as of right to the court of appeals from a final judgment of the district court or BAP.

In some circumstances, however, a direct appeal to the court of appeals can be authorized under § 158(d)(2). The requirements are similar to, but looser than, the

Excerpt from the May 13, 2024 Report of the Advisory Committee on Appellate Rules

standards for certification under 28 U.S.C. § 1292(b), which permits courts of appeals to hear appeals of interlocutory orders of the district courts in certain circumstances. Moreover, the certification can be made by the bankruptcy court, district court, BAP, or the parties. Under the Bankruptcy Rules, even if a bankruptcy court order has been certified for direct appeal to the court of appeals, the appellant must still file a notice of appeal to the district court or BAP in order to render the certification effective. As with § 1292(b), the court of appeals must also authorize the direct appeal.

Under this structure, a court of appeals' decision to authorize a direct appeal does not determine whether an appeal will go forward, but instead in what court the appeal will be heard. The party asking that the appeal from the bankruptcy court be heard directly in the court of appeals might be an appellee rather than an appellant. Accordingly, the Advisory Committee on Bankruptcy Rules is seeking final approval of a clarifying amendment to Bankruptcy Rule 8006(g) providing that any party to the appeal may file a request that the court of appeals authorize a direct appeal.

Current Appellate Rule 6(c), which governs direct appeals, largely relies on a cross-reference to Rule 5, which governs appeals by permission. But the proposed amendment to the Bankruptcy Rules revealed that Appellate Rule 5 is not a good fit for direct appeals in bankruptcy cases. That's because Rule 5 was designed for the situation in which the court of appeals is deciding whether to allow an appeal at all. But in the direct appeal context, that's not the question. Instead, in the direct appeal context, there is an appeal; the question is which court is going to hear that appeal.

More generally, experience with direct appeals shows considerable confusion in applying the Appellate Rules. This is primarily due to the manner in which Rule 6(c) cross-references Rule 5 and to its failure to take into account that an appeal of the bankruptcy court order in question is already proceeding in the district court or BAP, which results in uncertainty about precisely what steps are necessary to perfect an appeal after the court of appeals authorizes a direct appeal.

For these reasons, the proposed amendments overhaul Rule 6(c) and make it largely self-contained. Parties will not need to refer to Rule 5 unless Rule 6(c) expressly refers to a specific provision of Rule 5. Rule 6(c) makes Rule 5 inapplicable except to the extent provided for in other parts of Rule 6(c).

The proposed amendments also spell out in more detail how parties should handle initial procedural steps in the court of appeals once authorization for a direct appeal is granted, taking into account that an appeal from the same order will already be pending in the district court or BAP. The proposed Rule 6(c)(2) permits any party to the appeal to ask the court of appeals to authorize a direct appeal. It also adds provisions governing contents of the petition, answer or cross-petition, oral argument, form of papers, number of copies, and length limits and provides for calculating time, notification of the order authorizing a direct appeal, and payment of fees. It adds a provision governing stays pending appeal, makes clear that steps already taken in

Excerpt from the May 13, 2024 Report of the Advisory Committee on Appellate Rules

pursuing the appeal need not be repeated, and provides for making the record available to the circuit clerk. It requires all parties, not just the appellant or applicant for direct appeal, to file a representation statement. Additional changes in language are made to better match the relevant statutes.

None of these are intended to make major changes to existing procedures but to clarify those procedures.

We received only one public comment. The Minnesota State Bar Association's Assembly, its policy-making body, voted to support the proposed rule. It stated that the proposed changes "will foster transparency and possibly efficiency between parties and the court." The Advisory Committee on Bankruptcy Rules has not received any comments objecting to the amendments either.

The Advisory Committee unanimously recommends final approval of the proposed amendments as published.

* * * * *

