

LOCAL RULES
OF THE
UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE EIGHTH CIRCUIT

Revised December 1, 2014

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LOCAL RULE 8005A. ELECTION TO HAVE APPEAL HEARD BY THE DISTRICT COURT; APPLICABLE RULES; DISMISSAL

(a) Election to Have Appeal Heard by the District Court. Appellant's election to have the appeal heard by the district court shall be filed with the clerk of the bankruptcy court. Any other party's election shall be filed with the clerk of the bankruptcy appellate panel. The filing of any paper by an appellee with the bankruptcy appellate panel, except a Notice of Appearance, waives the time remaining in the thirty-day period to elect to have the appeal heard in district court. Until a timely election to have the appeal heard by the district court is filed, all motions and other papers shall be filed with the clerk.

(1) Timeliness of Election; Clerk's Duties. The election to have the appeal heard by the district court shall be made by using Bankruptcy Official Forms 17A or B, as applicable, or a form in substantial conformity with those forms. If any party makes a timely election to have the appeal heard by the district court, the clerk shall enter an order transmitting the appeal to the clerk of the district court.

(2) Determination of Validity of Election. If any party questions the validity of the election, the clerk shall refer the question to a panel.

(3) Cross Appeals. If a party makes a timely election to go to the district court on an appeal, then cross-appeals shall also go to the district court. Likewise, if neither party makes an election to go to the district court on an appeal, they may not elect to go to the district court on a cross-appeal.

(b) Applicable Rules. These Rules are promulgated under the authority of Fed.R.Bankr.P. 8026 and the Judicial Council of the Eighth Circuit's resolution dated April 10, 1996, entitled "Order of the Judicial Council Establishing a Bankruptcy Appellate Panel."

(1) Citation. These Rules will be known as the Local Rules of the United States Bankruptcy Appellate Panel for the Eighth Circuit and cited as: L.R. BAP 8th Cir.

(2) Effective Date. These Rules are effective January 1, 1997, as amended July 20, 2010, July 21, 2014, and December 1, 2014.

(3) Federal Rules of Bankruptcy Procedure 8001 et seq. Part VIII of the Federal Rules of Bankruptcy Procedure and Official Forms (Rule 8001) et seq. apply to proceedings in this court unless suspended as allowed by Fed.R.Bankr.P. 8028.

(4) Other Applicable Rules. When Part VIII of the Federal Rules of Bankruptcy Procedure and these Rules are silent as to a particular matter of practice, the court may order application of the Federal Rules of Appellate Procedure or the Local Rules of the United States Court of Appeals for the Eighth Circuit.

(c) Dismissal. If an appellant fails to comply with Part VIII of the Federal Rules of Bankruptcy Procedure or these Rules, the clerk shall notify the appellant that the appeal will be dismissed for want of prosecution unless appellant remedies the default within fourteen (14) days after the clerk issues the notice. If an appellant fails to remedy the default within the fourteen (14) day period, the clerk shall enter an order dismissing the appeal for want of prosecution and shall issue the mandate to the clerk of the bankruptcy court from which the appeal originated. After the appeal has been dismissed under this Rule, there is no remedy for default except by order of the court. The dismissal of an appeal shall not limit the court's authority to take disciplinary action against defaulting parties or counsel in appropriate cases.

LOCAL RULE 8009A. RECORD AND ISSUES ON APPEAL

The appellant's designation of the items to be included in the record on appeal pursuant to Fed.R.Bankr.P. 8009, and appellee's supplemental designation, should specifically include (in addition to those items referenced in Rule 8009) any exhibits received into evidence in the bankruptcy court to be considered on appeal. The record on appeal will only include those exhibits and other items that are properly designated pursuant to Rule 8009. If the exhibits or other items to be included in the record on appeal appear on the bankruptcy court docket in electronic form, parties shall designate them by filing a list of the relevant bankruptcy court docket numbers. If the exhibits do not appear on the bankruptcy court docket, the parties shall file them electronically onto the Bankruptcy Appellate Panel's docket via cm/ecf.

**LOCAL RULE 8010A. COMPLETION OF THE TRANSCRIPT AND
TRANSMISSION OF RECORD**

(a) Transmission of the Preliminary Record. Unless the appellant has filed an election to have the appeal heard by the district court, promptly upon the filing of a notice of appeal, the clerk of the bankruptcy court shall transmit to the clerk of the bankruptcy appellate panel a notice that an appeal has been taken.

(b) Supplemental Record. The clerk of the bankruptcy court shall supplement this preliminary record by transmitting to the clerk of the bankruptcy appellate panel notice of any subsequently filed appeal-related motions and orders.

(c) Transmission of the Record. Transmission of the preliminary record and any supplemental record to the clerk of the bankruptcy appellate panel constitutes transmission of the record on appeal for the purposes of Fed.R.Bankr.P. 8010(b).

(d) Docketing the Appeal. The clerk of the bankruptcy appellate panel shall docket the appeal and establish a schedule for the completion of the transcript and the filing of briefs. The clerk shall notify all parties to the appeal and the clerk of the bankruptcy court that the matter has been docketed and a briefing schedule established. At the time of the docketing the clerk shall assign the case a unique, permanent bankruptcy appellate panel case number.

(e) Duty of the court reporter to prepare and file the transcript. The acknowledgment of a transcript request prepared by the reporter, electronic court recording operator or transcribing service shall be filed with the clerk of the bankruptcy court pursuant to Fed.R.Bankr.P. 8010(a)(2)(A) and sent to the clerk of the bankruptcy appellate panel.

(f) Duty of the bankruptcy court clerk to transmit the transcript. Upon the filing of the transcript, the clerk of the bankruptcy court shall transmit an electronic copy of the transcript to the clerk of the bankruptcy appellate panel, who shall file it under seal.

LOCAL RULE 8011A. ELECTRONIC FILING AND NOTICING

(a) Electronic Filing. All documents shall be filed electronically. The electronic image of the document will constitute the original document for all court purposes. Filing is complete when the document is received in the clerk's database.

To each document filed electronically, the filer must add a certificate verifying that the original was signed by the attorney or party shown as the filer. The original signed document must be maintained by the filer for a period not less than the maximum allowable time to complete the appellate process. Upon request, the original document must be provided to other parties or to the court.

The clerk may allow a clerk of the bankruptcy court to transmit the notice of appeal and other required docketing documents electronically. Receipt of these documents is complete for filing purposes when they are received in the clerk's database.

(b) Electronic Noticing. Counsel who agree to accept electronic notice must agree that the electronic notice will be the only notice provided by the clerk.

LOCAL RULE 8013A. MOTIONS

(a) Orders the Clerk May Grant. The clerk has discretion to enter orders on behalf of the court in procedural matters, including, but not limited to:

- (1) applications for leave to file over-length briefs;
- (2) extensions of time to file briefs, transcripts and appendices;
- (3) corrections to briefs, pleadings, or the record;
- (4) supplementation of the record on appeal;
- (5) incorporation of the record from prior appeals;
- (6) consolidation of appeals;
- (7) substitution of parties;
- (8) motions to appear as amicus curiae;
- (9) requests by amicus curiae counsel to participate in oral argument by sharing time with other counsel;
- (10) advancement or continuance of cases;
- (11) withdrawal of counsel; and
- (12) extensions of time to file motions for rehearing and motions for attorneys' fees.

If any party seeks reconsideration of an order entered under this section, the clerk shall submit the matter for ruling by a three-judge panel.

(b) Motions to Dismiss. A party may move to dismiss an appeal for failure to comply with the Federal Rules of Bankruptcy Procedure or these Local Rules or any other Rule made applicable to the appeal.

(c) Motion for Extension of Time for Filing Brief. A motion for extension of time for filing a brief shall:

- (1) be made within the time limit established by the court's briefing schedule for the filing of such brief and shall be accompanied by proof of service on any party not a cm/ecf participant;

(2) be supported by a declaration stating the time when the brief is due; how many extensions of time, if any, have been granted and when the brief was first due; and whether any previous requests for extensions of time have been denied or denied in part;

(3) briefly recite the reasons why such an extension is necessary and the amount of time requested. Any motion for an extension of time to file a brief on the ground that the transcript is unavailable must affirmatively show that the transcript was timely ordered and paid for or must state why the transcript was not so ordered.

Pursuant to L.R. BAP 8th Cir. 8013A(a)(2), the clerk is authorized to rule on all motions for extension of time to file a brief. Motions for extension of time will be processed promptly and without awaiting responses from opposing counsel. Any objection received after an order has been entered on the motion may be treated as a request for reconsideration.

(d) Emergency Motions. If a movant certifies that to avoid immediate irreparable harm, relief is needed on an emergency basis, the motion shall be governed by Fed.R.Bankr.P. 8013(d) and the following requirements:

(1) Any motion under this Rule shall have a cover page bearing the legend "Emergency Motion" and the caption of the case.

(2) A certificate of counsel for the movant shall follow the cover page and shall contain:

- (A) Facts showing the existence and nature of the claimed emergency;
- (B) The telephone numbers and office addresses of moving and opposing counsel and parties who are not represented by counsel;
- (C) When and how the other parties were notified and whether they have been served; or if not notified and served, why that was not done;
- (D) If the relief sought in the motion was available in the bankruptcy court, a statement as to whether all grounds advanced in support of the motion brought before the panel were submitted

to the bankruptcy court, and, if not, the reasons why.

(3) An appendix to the Emergency Motion shall be served and filed with the motions and shall include the following:

- (A) A copy of the Notice of Appeal (if applicable);
- (B) A copy of the judgment, order, or decree from which the appeal is taken;
- (C) A copy of the bankruptcy court's order denying the movant emergency relief.

(4) Emergency motions and responses shall be filed with the clerk in St. Louis, Missouri. The movant must use every practicable effort to notify and serve opposing counsel, using the quickest method available. The burden is on the movant to provide to the clerk and to opposing counsel copies of all documents relevant to the motion

(e) Reconsideration of Orders. Any party adversely affected by an order entered under the provisions of this Rule may file a motion to reconsider, vacate or modify the order within fourteen (14) days after its entry. The motion shall be referred to a three-judge panel.

Rule 8014A. BRIEFS

(a) Briefs. All briefs shall identify all citations to the record by either (1) a hyperlink to the docket entry, page, and line or (2) the docket number, page, and line.

(b) Form of Briefs. In addition to the requirements of Fed.R.Bankr.P. 8014 and 8016, the brief (except for amicus briefs filed pursuant to Fed.R.Bankr.P. 8017) shall include:

(1) Certification of Interested Parties. A certification of interested parties shall include a list of persons, associations of persons, firms, partnerships and corporations which may have an interest in the outcome of the case in substantially the following form:

NUMBER AND TITLE OF THE APPEAL
Certification Required By L.R.BAP 8th Cir.
8014A(b)(1): The undersigned, counsel of record for _____ certifies that the following listed party (or parties) has (have) an interest in the outcome of this appeal. These representations are made to enable the judges of the panel to evaluate possible disqualification or recusal.

(Here list the names of all such parties and identify their connection and interest with the appeal.)

(Signature)

(2) Certification of Related Cases. A Certification of Related Cases which shall include a statement of all known related cases before a United States Court of Appeals, a United States District Court, a United States Bankruptcy Court, or a United States Bankruptcy Appellate Panel. A related case is one which involves substantially the same litigants, or one which involves substantially the same factual pattern or legal issue.

(c) Service of Briefs. Service shall be made by cm/ecf upon filing of the brief. However, one paper copy of the brief shall be served on any party who is not a cm/ecf participant; such briefs shall be accompanied by a certificate stating the date and method of service, as well as the address to which the brief was served.

Rule 8015A. FORM AND LENGTH OF BRIEFS

Principal briefs shall not exceed 6500 words and reply briefs shall not exceed 3900, exclusive of pages containing the table of contents, tables of citations, statement of the basis of appellate jurisdiction, statement of the issues and standard of review. The filing party must include in the brief a certificate stating the number of words contained in the body of the brief.

LOCAL RULE 8018A. APPENDIX NOT REQUIRED

Parties shall not file an appendix in paper form. Parties may comply with the appendix requirements set forth in Fed.R.Bankr.P. 8018(b) and (c) by filing a list of relevant bankruptcy court docket entry numbers in lieu of copies of the pleadings. This list may be filed as a separate document or may be attached to a party's initial brief.

LOCAL RULE 8022A. MOTION FOR REHEARING

(a) Form of Motion and Length. Unless an order granting permission to file an over-length motion for rehearing is granted, the motion must not exceed the page limit set forth in Fed.R.Bankr.P. 8022(b), and the motion may not incorporate briefs filed in this or another court.

(b) Extensions of Time. Upon a showing of good cause, the clerk may grant a party an additional fourteen (14) days to file either a motion for rehearing or a required response. The motion for the extension of time must be filed within the time allowed for the filing of the motion for rehearing or response. Motions for extension of time filed after the expiration of the time for filing a motion for rehearing or response may be denied as untimely.

**LOCAL RULE 8024A. DUTIES OF THE CLERK OF THE BANKRUPTCY
APPELLATE PANEL**

(a) Clerk of the Bankruptcy Appellate Panel.

(1) Designation of Clerk. The Clerk of the United States Court of Appeals for the Eighth Circuit shall serve as the Clerk of the United States Bankruptcy Appellate Panel for the Eighth Circuit. Unless it is inconsistent with the context, the word clerk in these rules means the Clerk of the United States Bankruptcy Appellate Panel for the Eighth Circuit.

(2) Communications to the Bankruptcy Appellate Panel. All communications to the Bankruptcy Appellate Panel shall be addressed to:

Clerk of the Court
United States Bankruptcy Appellate Panel
for the Eighth Circuit
Thomas F. Eagleton Court House
111 S. Tenth Street, 24th Floor
St. Louis, MO 63102

(b) Issuance of Mandate. The clerk shall issue the mandate of the court seven (7) days after the expiration of the time for filing a motion for rehearing. The mandate is effective when issued.

(c) Stay of Mandate. The court's mandate may be stayed on the following conditions:

(1) On Motion for Rehearing. The timely filing of a motion for rehearing will stay the mandate until disposition of the motion unless otherwise ordered by the court. If the motion is denied, the mandate shall issue seven(7) days after entry of the order denying the motion.

(2) Pending Appeal. A party who files a motion requesting a stay of mandate pending appeal to the United States Court of Appeals for the Eighth Circuit must show that the appeal presents a substantial question and that there is good cause for a stay. The stay cannot exceed thirty (30) days unless the period is extended for cause shown or unless a notice of appeal is filed during the period of the stay, in which case the stay will continue until final disposition by the Court of Appeals. The clerk shall issue the mandate immediately when a copy of an order of the Court of Appeals is entered disposing of the appeal. The court may require a bond or other security as a condition to the grant or continuance of a stay of the mandate.

LOCAL RULE 8026A. ADMITTING AND DISCIPLINING ATTORNEYS

(a) Admission. Any attorney admitted to practice before the Court of Appeals for the Eighth Circuit, and in good standing before that court, may practice before the United States Bankruptcy Appellate Panel for the Eighth Circuit. No separate admission fee shall be required. An attorney who is not admitted may file a written pleading but may not appear to present oral argument.

(b) Discipline. The court may take any appropriate disciplinary action against an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with these Rules or any court Rule. Counsel will be afforded reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing. The Bankruptcy Appellate Panel may direct the clerk to refer a disciplinary matter to the United States Court of Appeals for the Eighth Circuit.