

2018
Bankruptcy
Law Seminar

2018 AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

Presented by the U.S. Bankruptcy Court Clerks for the
Northern, Middle and Southern Districts of Alabama

November 16, 2018

Disclaimer

This presentation is a summary of the new proposed Rules, and is intended to provide introductory information. Attorneys should perform their own review and analysis of these new Rules prior to the proposed implementation date of December 1, 2018.



Proposed New Rule

8018.1



Rule 3002.1. Notice Relating to Claims Secured by Security Interest in Debtor's Principal Residence

Section (b) will be subdivided as follows:

- (b)(1) authorizes courts to modify home-equity line of credit and provides flexibility for courts to specify alternate procedures for keeping the person who is to maintain payments apprised of the current payment amount
- (b)(2) acknowledges the right of the trustee, debtor, or party-in-interest to object to a change in the home mortgage payment amount
 - Also allows parties to file a motion to determine validity of the payment change



Rule 3002.1. Notice Relating to Claims Secured by Security Interest in Debtor's Principal Residence (Continued)



Amendments to subdivisions (b) and (e) are intended to:

- Create flexibility regarding a notice of payment change for home equity lines of credit.
- Create a procedure for objecting to a notice of payment change.
- Expand the category of parties who can seek a determination of fees, expenses, and charges that are owed at the end of the case.

Rule 5005. Filing and Transmittal of Papers



Makes electronic filing mandatory in all districts for entities represented by an attorney, unless non-electronic filing is allowed by the court for good cause or is allowed or required by local rule.



Gives discretion to each court to decide whether a pro se individual may or may not be required to file electronically.



The proposed amendments are coordinated with similar amendments across the Federal Rules of Appellate, Civil and Criminal Procedure that would require a person represented by counsel to file papers electronically, but allow exceptions for good cause.



Section (a)(2)(C) of Rule 5005 is revised to state: "Signing. A filing made through a person's electronic filing account, together with the person's name on the signature block, constitutes the person's signature."

Rule 7004. Process; Service of Summons, Complaint

Amended to update the cross-reference to Federal Rule of Civil Procedure 4.

- Rule 7004 incorporates by reference Rule 4(d)(1), which addresses the effect of a defendant's waiver of service. Civil Rule 4 was amended in 2007 and the old Rule 4(d)(1) was modified and renumbered as Rule 4(d)(5).

Rule 7062. Stay of Proceedings to Enforce a Judgment

Amended to retain the 14-day period for the automatic stay of a judgment.

An amendment to Federal Rule of Civil Procedure 62 includes a change that would lengthen the automatic stay of a judgment entered in the district court from 14 to 30 days to address a gap between the end of the judgment-stay period and the 28-day time-period for making certain post-judgment motions in civil practice. Because the deadline for post-judgment motions in bankruptcy is 14 days, however, the proposed amendment to Bankruptcy Rule 7062 would maintain the current 14-day duration of the automatic stay of judgment.



Rule 8002. Time for Filing Notice of Appeal

- The amendments to Rule 8002(a), (b), and (c) are intended to conform to the inmate filing provisions in Rules 4(c) and 25(a)(2)(C) of the Federal Rules of Appellate Procedure (together with Bankruptcy Rule 8011(a)(2)(C)).
- This amendment clarifies that a notice of appeal and other papers are timely filed by inmates if certain specific requirements are met, including that the documents are deposited in the institution's internal mail system on or before the last day for filing the appeal. In addition:
 - Prepayment of postage by an inmate is required;
 - A document is timely if it is accompanied by evidence showing that it was deposited on or before the due date and that the postage was prepaid;
 - If sufficient evidence does not accompany the initial filing, the Court of Appeals has discretion to permit the late filing of a declaration or notarized statement to establish timely deposit.
- A new subdivision (a)(5) is added to Bankruptcy Rule 8002 (Time for Filing Notice of Appeal) defining entry of judgment. The amendment clarifies that the time for filing a notice of appeal under subdivision (a) begins to run upon docket entry in contested matters and adversary proceedings for which Rule 58 does not require a separate document. In adversary proceedings for which Rule 58 does require a separate document, the time commences when the judgment, order, or decree is entered on the docket and either (1) it is set forth on a separate document, or (2) 150 days have run from the entry on the docket, whichever occurs first. [Failure of the court to comply with the separate document requirement of Rule 58 does not affect the validity of an appeal.]



Rule 8006. Certifying a Direct Appeal to the Court of Appeals

Adds a new section which provides authority for the court to file a statement on the merits of a certification for direct review by the court of appeals when the certification is made jointly by all parties to the appeal. This new section is a counterpart to subdivision (e)(2) of Rule 8006, which allows a party to file a similar statement when the court certifies direct review on the court's own motion.

Rule 8007. Stay Pending Appeal; Bonds; Suspension of Proceedings

The amendments to Bankruptcy Rule 8007(a)(1)(B), (c), and (d) conform with the amendment to Federal Rule of Civil Procedure 62, which is made applicable to adversary proceedings by Rule 7062 of the Federal Rules of Bankruptcy Procedure.

Civil Rule 62 formerly required a party to provide a “supersedeas bond” to obtain a stay of the judgment and proceedings to enforce the judgment. As amended, the word ‘supersedeas’ is removed and Rule 62(b)(2) is expanded to allow a party to obtain a stay by providing a “bond or other security.”

Rule 62 formerly required a party to provide a “supersedeas bond” to obtain a stay of the judgment and proceedings to enforce the judgment. As amended, Rule 62(b)(2) allows a party to obtain a stay by providing a “bond or other security.”

Rule 8010. Completing and Transmitting the Record

The amendment to Bankruptcy Rule 8010(c) conforms this rule with the amendment to Federal Rule of Civil Procedure 62, which is made applicable by Bankruptcy Rule 7062. The amendment removes the word ‘supersedeas’ and allows a party to obtain a stay by providing a “bond or other security.”

Rule 8011. Filing and Service; Signature

- The amendment to Rule 8011 addresses filing, service, and signatures in bankruptcy appeals. Rule 8011(a)(2)(A)(iii) is revised to conform with Appellate Rule 25(a)(2)(A)(iii) and is intended to clarify and streamline inmate filings. Other changes to Rule 8011: ☐ set forth what constitutes timely notice (with and without a declaration or notarized statement; ☐ state when service is complete and clarify that service is not effective if the person who filed it electronically or in paper- receives notice that it did not reach the person(s) to be served); ☐ eliminate the requirement of proof of service when service is made through the court's electronic filing system.
- Consistent with Federal Rule of Bankruptcy Procedure 8011(c), subdivision (a)(2) generally makes electronic filing mandatory, with exceptions for pro se parties, good cause and local rule variations.
- The amendment to Bankruptcy Rule 8011 establishes a uniform national signature provision for bankruptcy appeals.
- Subdivisions (a), (c), (d), and (e) of Rule 8011 were changed to conform to changes to Rule 5005 of the Federal Rules of Bankruptcy Procedure.

Rule 8013. Motions; Intervention

Rule 8013(f)(3) is amended to conform with Appellate Rule 27(d)(2), which was amended to replace page limits for motions and responses with word limits. Documents produced by a computer must include a certificate of compliance required by Rule 8015(h); Official Form 417C fulfills the requirement. Page limits are retained for handwritten and typewritten papers. The calculation excludes the accompanying documents required by Rule 8013(a)(2)(C) and items listed in Rule 8015(h). Rule 8015 is also amended to conform with recent amendments to Rule 32 of the Federal Rules of Appellate Procedure which reduced word limits generally allowed for briefs. The Committee expects the courts will accommodate exceptional situations by granting leave to exceed the limitations.


Rule 8016. Cross-Appeals

Rule 8016 is also amended to conform with recent amendments to Federal Rule of Appellate Procedure 28.1 which reduces word limits allowed in briefs and cross-appeals.

Rule 8016(d) is amended to refer to the new subsection (h) of the Rule 8015, which now contains the certificate-of-compliance provision formerly in Rule 8015(a)(7)(C).

Rule 8017. Brief of an Amicus Curiae

Bankruptcy Rule 8017 is amended to conform with recent amendments to Federal Rule of Appellate Procedure 29, which addresses amicus filings relating to petitions for rehearing. Rule 8017 currently includes subdivision (a) and governs amicus briefs during a court's initial consideration of a case on the merits; the amendments to this rule will create a new subdivision (b) which govern amicus briefs when a district court or BAP considers whether to grant a rehearing. The latter could be overridden by a local rule or order in a case. Rule 8017(b)(2) was also amended to add that authorization for the court to prohibit the filing or strike an amicus brief that would result in a judge's disqualification. The standards in Rule 8017(a) for when an amicus brief requires a judge's disqualification remain unchanged. (Addresses issues at the district and BAP level.)




Rule 8018.1. District Court Review of a Judgment that Bankruptcy Court Lacked Constitutional Authority to Enter

NEW RULE!

Authorizes a district court to treat a bankruptcy court's judgment as proposed findings of fact and conclusions of law if the district court determines that the bankruptcy court lacked constitutional authority to enter a final judgment.

Eliminates the need to remand an appeal to the bankruptcy court merely to recharacterize the judgment as proposed findings and conclusions.



Rule 8021. Costs

Rule 8021 is amended to conform with changes to Federal Rule of Civil Procedure 62 which is made applicable in adversary proceedings by Bankruptcy Rule 7062; the reference to "supersedeas" is removed and replaced with "bond or other security."

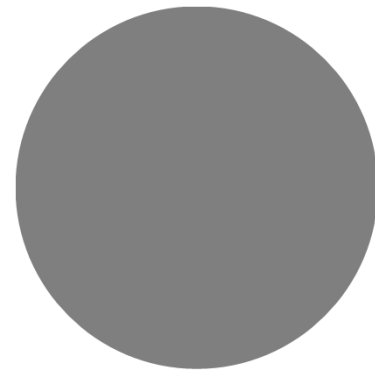
Rule 8022. Motion for Rehearing

Rule 8022(b) is amended to conform with Appellate Rule 40(b) which substitutes word limits for page limits in motions for rehearing.



Rule 9025 is amended to conform with Federal Rule of Civil Procedure 62 which is made applicable to adversary proceedings by Rule 7062. By previously limiting Rule 62's enforcement procedures to sureties, the rule might exclude use of those procedures against a security provider that is not a surety. All security providers are brought under the rule by these conforming amendments.

Rule 9025. Security; Proceedings Against Security Providers



Form changes

The following forms will be re-designated as Official Forms. (Currently Director's Procedural Forms)

- Form 4011A to 411A General Power of Attorney
- Form 4011B to 411B Special Power of Attorney