

Rule 8018. Rules by Circuit Councils and District Courts; Procedure When There is No Controlling Law

(a) LOCAL RULES BY CIRCUIT COUNCILS AND DISTRICT COURTS.

(1) Circuit councils which have authorized bankruptcy appellate panels pursuant to 28 U.S.C. § 158(b) and the district courts may, acting by a majority of the judges of the council or district court, make and amend rules governing practice and procedure for appeals from orders or judgments of bankruptcy judges to the respective bankruptcy appellate panel or district court consistent with—but not duplicative of—Acts of Congress and the rules of this Part VIII. Local rules shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Rule 83 F.R.Civ.P. governs the procedure for making and amending rules to govern appeals.

(2) A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a non-willful failure to comply with the requirement.

(b) PROCEDURE WHEN THERE IS NO CONTROLLING LAW. A bankruptcy appellate panel or district judge may regulate practice in any manner consistent with federal law, these rules, Official Forms, and local rules of the circuit council or district court. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, Official Forms, or the local rules of the circuit council or district court unless the alleged violator has been furnished in the particular case with actual notice of the requirement. (As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 27, 1995, eff. Dec. 1, 1995.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is similar to Rule 47 F.R.App.P. and Rule 83 F.R.Civ.P. Local rules governing procedure before the bankruptcy courts may be promulgated under Rule 9028.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

Rule 83 F.R.Civ.P. was amended in August 1985 to require greater participation by the public in the rule making process. The amendment to Rule 8018 incorporates Rule 83 F.R.Civ.P. Under 28 U.S.C. § 158(b)(2), appeals may be taken to a bankruptcy appellate panel only if the district court so authorizes. If a district court does not authorize appeals to the bankruptcy appellate panel, appeals will be to the district court. This rule is amended to authorize district courts to promulgate rules for appeals.

NOTES OF ADVISORY COMMITTEE ON RULES—1995
AMENDMENT

The amendments to this rule conform to the amendments to Rule 9029. See Committee Note to the amendments to Rule 9029.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subd. (a)(1), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 8019. Suspension of Rules in Part VIII

In the interest of expediting decision or for other cause, the district court or the bank-

ruptcy appellate panel may suspend the requirements or provisions of the rules in Part VIII, except Rules 8001, 8002 and 8013, and may order proceedings in accordance with the direction.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is derived from Rule 2 F.R.App.P.

Rule 8020. Damages and Costs for Frivolous Appeal

If a district court or bankruptcy appellate panel determines that an appeal from an order, judgment, or decree of a bankruptcy judge is frivolous, it may, after a separately filed motion or notice from the district court or bankruptcy appellate panel and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

(Added Apr. 11, 1997, eff. Dec. 1, 1997.)

NOTES OF ADVISORY COMMITTEE ON RULES—1997

This rule is added to clarify that a district court hearing an appeal, or a bankruptcy appellate panel, has the authority to award damages and costs to an appellee if it finds that the appeal is frivolous. By conforming to the language of Rule 38 F.R.App.P., this rule recognizes that the authority to award damages and costs in connection with frivolous appeals is the same for district courts sitting as appellate courts, bankruptcy appellate panels, and courts of appeals.

GAP Report on Rule 8020. No changes to the published draft.

PART IX—GENERAL PROVISIONS

Rule 9001. General Definitions

The definitions of words and phrases in §§ 101, 902, 1101, and 1502 of the Code, and the rules of construction in § 102, govern their use in these rules. In addition, the following words and phrases used in these rules have the meanings indicated:

(1) “Bankruptcy clerk” means a clerk appointed pursuant to 28 U.S.C. § 156(b).

(2) “Bankruptcy Code” or “Code” means title 11 of the United States Code.

(3) “Clerk” means bankruptcy clerk, if one has been appointed, otherwise clerk of the district court.

(4) “Court” or “judge” means the judicial officer before whom a case or proceeding is pending.

(5) “Debtor.” When any act is required by these rules to be performed by a debtor or when it is necessary to compel attendance of a debtor for examination and the debtor is not a natural person: (A) if the debtor is a corporation, “debtor” includes, if designated by the court, any or all of its officers, members of its board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control; (B) if the debtor is a partnership, “debtor” includes any or all of its general partners or, if designated by the court, any other person in control.

(6) “Firm” includes a partnership or professional corporation of attorneys or accountants.

(7) “Judgment” means any appealable order.