

All courts have been asked to amend their local rules to conform to the national rules changes that take effect December 1, 2009, and regularize and simplify many of the day counting rules. To that end the Bankruptcy Appellate Panel judges recommend the changes set forth below. Comments are welcome.

8011(e)-1

DELEGATION OF AUTHORITY TO ACT ON MOTIONS

The BAP judges may delegate to the BAP Clerk authority to act on motions that are subject to disposition by a single judge pursuant to FRBP 8011(e), upon the condition that the order entered on the motion does not dispose of the appeal or resolve a motion for stay pending appeal. The order disposing of the motion is subject to reconsideration by a judge if a written request for judicial review is received within ~~ten (10) days~~ **fourteen (14) days** of the entry of the order.

8070-1

DISMISSAL FOR FAILURE TO PROSECUTE

When an appellant fails to file an opening brief timely, or otherwise fails to comply with rules or orders regarding processing the appeal, the BAP Clerk, after notice, may enter an order dismissing the appeal. The order dismissing the appeal is subject to reconsideration by the Panel if a written request for judicial review is received within ~~ten (10) days~~ **fourteen (14) days** of the entry of the order.

Rule 8013-1

DISPOSITION OF APPEAL

(a) OPINION or MEMORANDUM. The Panel may determine that a written disposition of a matter before the Panel will be designated an OPINION if it:

- (1) Establishes, alters, modifies or clarifies a rule of law;
- (2) Calls attention to a rule of law which appears to have been generally overlooked;
- (3) Criticizes existing law; or
- (4) Involves a legal or factual issue of unique interest or substantial public importance.

A written disposition of a case not designated for publication will be captioned a MEMORANDUM.

(b) PUBLICATION. Publication of a final disposition means the BAP Clerk will

release a copy to recognized channels for dissemination. Only opinions, and orders designated for publication by the Panel, will be published.

(c) CITATION. Unpublished memoranda and orders have no precedential value and may not be cited except when relevant under the doctrines of law of the case, res judicata, or collateral estoppel.

(d) REQUEST FOR PUBLICATION. Any party may request, by letter, that the Panel publish a memorandum. The request must be received no later than ~~30 days~~ **28 days** after the filing of the memorandum and must state concisely the reasons for publication.

If en banc amendments accepted, here is how the proposed draft rule will need to be amended:

Rule 8013-1. DISPOSITION OF APPEALS

(a) **DISPOSITION.** The Panel will dispose of all appeals by entry of an Opinion, Memorandum or Order.

(b) **DESIGNATION.**

(1) *Opinion.* A disposition of an appeal may be designated as an Opinion if it:

- (A) Establishes, alters, modifies or clarifies a rule of law;
- (B) Calls attention to a rule of law which appears to have been generally overlooked;
- (C) Criticizes existing law; or
- (D) Involves a legal or factual issue of unique interest or substantial public importance.

(2) *Memorandum or Order.* A disposition of an appeal not designated as an Opinion will be designated as either a Memorandum or an Order.

(3) *Manner of Designation.* A disposition shall be designated an Opinion if:

- (A) two of the three judges assigned to hear and dispose of the appeal, including the author of the disposition, agree that the disposition shall be designated an Opinion at the time such disposition is filed with the Clerk, or within ~~30 days~~ **28 days** thereof; or
- (B) an interested party, or any member of the Panel, requests, in writing, that a Memorandum or Order be redesignated as an Opinion, and that it be published. The request must be received no later than ~~30 days~~ **28 days** after the filing of the Memorandum or Order and must state concisely the reasons for publication. The judges assigned to hear and dispose of the appeal shall vote on whether to change the initial designation and, if two of the three judges assigned to hear and dispose of the appeal, including the author of the disposition, agree that the

disposition shall be designated an Opinion.

(c) **CITATION AND EFFECT.**

(1) *Opinions.* Opinions shall be published. They shall bind the Panel as precedent unless they are modified or reversed in an Opinion issued by the Panel sitting en banc, or unless they no longer are precedent due to changes in the law, whether by act of Congress or by decision of the Ninth Circuit Court of Appeals or the Supreme Court.

(2) *Memoranda and Orders.* Except as provided in subsection (d), Memoranda and Orders will not be published, shall have no precedential value, and may not be cited except when relevant under the doctrine of law of the case, or under rules of claim or issue preclusion.

(d) **PUBLICATION.**

(1) *Opinions.* If the disposition is to be published, the BAP Clerk will release a copy to recognized channels for dissemination to the public.

(2) *Orders.* An Order may be designated for publication if so designated by the process provided in subsection (b)(3), with the following changes: (i) only two judges, one of whom is the author of the Order, need to agree as to publication; and (ii) the Order shall be treated as if it were a disposition of the appeal for all other purposes of applying that subsection. When so published, the Order may be used for any purpose for which an Opinion may be used. Upon designation as published, the BAP Clerk will release a copy to recognized channels for dissemination to the public.