

Local Rules

Bankruptcy Appellate Panel for the Sixth Circuit

January, 1997

RULES
BANKRUPTCY APPELLATE PANEL
OF THE SIXTH CIRCUIT

RULE 8000 - 1. DEFINITIONS - APPEAL

(a) **Panel Clerk.** The words “panel clerk” as used in these rules mean the Clerk of the Bankruptcy Appellate Panel of the Sixth Circuit.

(b) **Judge.** The word “judge” as used in these rules, unless otherwise designated, means a judge of the Bankruptcy Appellate Panel of the Sixth Circuit.

(c) **Panel.** The word “panel” as used in these rules means a panel of three judges of the Bankruptcy Appellate Panel of the Sixth Circuit.

(d) **BAP.** The acronym “BAP” or the words “Bankruptcy Appellate Panel of the Sixth Circuit” as used in these rules mean the Bankruptcy Appellate Panel Service established by the Judicial Council of the Sixth Circuit pursuant to 28 U.S.C. § 158(b)(1).

**RULE 8001 - 3. ELECTION FOR DISTRICT COURT
DETERMINATION OF APPEAL**

(a) **Written Statement of Election Required.** In districts that have authorized appeals to the BAP, every appeal filed in the bankruptcy court shall be heard by the Bankruptcy Appellate Panel of the Sixth Circuit unless--

(1) at the time of filing the appeal or cross-appeal, the appellant or cross-appellant files with the clerk of the bankruptcy court a separate written statement of election to have the appeal heard by the district court; or,

(2) within thirty days after service of notice of the appeal, any other party to the appeal files with the panel clerk a separate written statement of election to have the appeal heard by the district court. The filing by any other party to the appeal of any paper (other than a notice of appearance) with the BAP waives the time remaining in the thirty-day period for that party to elect to have the appeal heard by the district court.

(b) Upon Motion for Leave to Appeal. In districts that have authorized appeals to the BAP, every appeal upon motion for leave to appeal under Rule 8003 shall be heard by the Bankruptcy Appellate Panel of the Sixth Circuit unless--

(1) at the time of filing the motion for leave to appeal, the moving party files with the clerk of the bankruptcy court a separate written statement of election to have the appeal heard by the district court; or,

(2) within thirty days after service of the motion for leave to appeal, any party adverse to the motion for leave to appeal files with the clerk of the bankruptcy court a separate written statement of election to have the appeal heard by the district court. The filing by any party adverse to the motion for leave to appeal of any paper (other than a notice of appearance) with the BAP or the filing of a response to the motion for leave to appeal with the bankruptcy court, waives the time remaining in the thirty-day period for that party to elect to have the appeal heard by the district court.

RULE 8004 - 1. SERVICE OF NOTICE OF APPEAL

The clerk of the bankruptcy court shall forthwith transmit to the panel clerk a copy of the notice of appeal together with a copy of the order or judgment from which the appeal is taken.

RULE 8008 - 1. FILING PAPERS - APPEAL

Unless prior authorization is obtained from the panel clerk, filing of papers by facsimile is not permitted.

RULE 8009 - 3. FORMS OF APPENDIX TO BRIEFS - APPEAL

(a) **Organization and Presentation.** The appendix shall be bound separately from the brief. The appendix shall be reproduced on white paper by any copying process producing a clearly legible image. Papers in the appendix shall be organized as follows: a table of contents shall be first; relevant entries on the bankruptcy court docket shall be second; other items shall follow in the order listed on the docket (unless so voluminous as to be separately bound). If the appendix includes both items from the bankruptcy court case docket and items from an adversary proceeding docket, entries on the case docket shall precede entries on the adversary proceeding docket. If this organization is impossible or inappropriate for a particular appeal, any different organization shall be explained in a note to the table of contents.

(b) **Numbers of Copies.** Five copies of each appendix shall be filed. One copy of the appendix shall be served on each other party.

(c) **Portions of Transcript.** Pursuant to Rule 8009(b)(9), the appendix shall include the portions of the transcript necessary for adequate review of the issues before the panel. The panel is required to consider only those portions of the transcript included in the appendix.

(d) **Appendix as Public Record.** Appendices filed with the BAP are public records. To have an appendix sealed, a timely motion must be filed.

RULE 8010 - 1. FORMS OF BRIEFS - APPEAL

(a) **Number of Copies.** Five copies of each brief shall be filed. One copy of the brief shall be served on each other party.

(b) **References to the Record.** References in the briefs to the record should include the number of the document on the bankruptcy court docket, if any, and the page of the document.

(c) **Citation of “Unpublished” Decisions.** Citation in briefs and oral arguments of decisions designated “not for publication” by the Sixth Circuit, or given any similar limited precedential effect by the court rendering the decision, is disfavored, except for the purpose of establishing res judicata, estoppel, or the law of the case. Such decisions may be cited only if a copy thereof is served on all other parties and on the panel. Service may be accomplished by including a copy of the decision in an addendum to the brief.

(d) **Format and Spacing of Type.** Briefs shall be submitted on white 8½ by 11-inch paper in typewritten form, using electronic word processing, or similar process, and reproduced by photocopying, or similar process. Briefs shall be double-spaced in a font not less than 12 points in size with margins of not less than one inch.

(e) **Color of Covers.** Covers shall be the following colors:

Appellant’s First Brief	Tan
Appellee’s First Brief	Green
Appellant’s Second Brief	Yellow
Appellee’s Second Brief	White
Intervenor or Amicus Brief	White
Appendix	White

(f) **Extensions of Time.** Extensions of time for the filing of briefs must be sought by motion and for good cause shown.

(g) **Briefs as Public Record.** Briefs filed with the BAP are public records. To have a brief sealed, a timely motion must be filed.

RULE 8011 - 2. DETERMINATION OF PROCEDURAL MOTION - APPEAL

(a) **By Panel Clerk.** The panel clerk may act on the following motions without submission to a panel or judge:

(1) Motions that are procedural or relate to the preparation or filing of the appendix or briefs;

(2) Motions for voluntary dismissal of appeals;

(3) Motions to dismiss for want of prosecution;

(4) Motions for extensions of time;

(5) Motions to withdraw or for substitution of counsel; and

(6) Such other motions as the BAP may designate the panel clerk to act upon that are subject to disposition by a single judge under Rule 8011(e).

(b) Order by Panel Clerk. An order by the panel clerk disposing of a motion shall show that it was entered by the panel clerk pursuant to this rule. Any party adversely affected by an order entered by the panel clerk shall be entitled to reconsideration by a judge or panel if, within ten days of service of notice of entry of the order, the party files a motion for reconsideration.

RULE 8011 - 4. EMERGENCY MOTION - APPEAL

An emergency motion pursuant to Rule 8011(d) shall be filed with the panel clerk in Cincinnati, Ohio. The movant shall provide all documents relevant to the motion to the BAP and to all opposing parties.

RULE 8012 - 1. ORAL ARGUMENT - APPEAL

(a) Advancement of Hearing. A panel may, on its own motion or for good cause shown on motion of a party, advance any case to be heard, though the time permitted under the rules for filing briefs may not have expired as of the hearing date.

(b) Postponement of Hearing. After a case has been set for hearing, postponement must be sought by motion for good cause shown.

(c) Oral Argument.

(1) Oral argument will not be heard on behalf of any party for whom a brief has not been filed unless otherwise directed by the panel.

(2) An amicus curiae may, with the consent of a party, argue orally on the side of such party, provided that the time permitted for oral argument on behalf of that party will not thereby be exceeded. In the absence of such consent, argument for an amicus curiae may be made only upon motion to the panel in advance of the hearing date.

(d) Waiver of Oral Argument. Oral argument may be waived upon written stipulation of the parties, unless the panel orders otherwise.

RULE 8013 - 1. DISPOSITION OF APPEAL

(a) In Open Court. In those cases in which the decision is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by a written opinion, disposition of the case may be made in open court following oral argument. A written judgment shall be signed and entered by the clerk in accordance with the decision of the panel from the bench.

(b) Decisions as Precedent. A panel may limit the precedential effect of a decision to the case and parties before it by so stating in its decision. Absent such a statement, decisions of a panel shall not be limited as precedent for purposes of 6th Cir. BAP LBR 8010 - 1(c).

RULE 8016 - 4. CLERK OF THE BANKRUPTCY APPELLATE PANEL

(a) Designation of Clerk. The Clerk of the United States Court of Appeals for the Sixth Circuit shall serve as Clerk of the Bankruptcy Appellate Panel of the Sixth Circuit.

(b) Communications to the BAP. All communications to the BAP shall be addressed to the Clerk of the Bankruptcy Appellate Panel of the Sixth Circuit, 532 Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio 45202-3988.

RULE 8018 - 1. LOCAL RULES OF CIRCUIT JUDICIAL COUNCIL OR DISTRICT COURT

The Rules of the Bankruptcy Appellate Panel of the Sixth Circuit shall be cited as: “**6th Cir. BAP LBR** _____ - _____.” For example, subsection (a) of Rule 8010-1 of these rules shall be cited as “6th Cir. BAP LBR 8010 - 1(a).”

RULE 8070 - 1. DISMISSAL OF APPEAL BY COURT FOR NON-PROSECUTION

(a) **After Notice by Panel Clerk.** If an appellant or cross-appellant fails to comply with the Federal Rules of Bankruptcy Procedure or with these rules, the panel clerk shall notify the appellant or cross-appellant that the appeal or cross-appeal will be dismissed for non-prosecution unless the default is remedied within fifteen days. If the appellant or cross-appellant fails to remedy the default within the fifteen day period, the panel clerk shall enter an order dismissing the appeal or cross appeal for non-prosecution.

(b) **By a Panel.** A panel on its own initiative or on the motion of a party may dismiss an appeal or take other appropriate action, including an award of damages and attorney’s fees, for the failure of any party to comply with the Federal Rules of Bankruptcy Procedure or with these rules. Dismissal by a panel is independent of the notice of default provided in subsection (a) of this rule.

RULE 8080 - 2. PRE-ARGUMENT CONFERENCE AND MEDIATION - APPEAL

(a) **Pre-Argument Conference.** All bankruptcy appeals shall be reviewed by staff attorneys to determine if a pre-argument conference would be of assistance to the BAP or the parties. Such a conference may be conducted by a judge or a staff attorney known as the conference attorney designated by the chief judge. Any party may request a pre-argument conference by motion.

(b) **Attendance.** Any party may be required to attend a pre-argument conference--in person or by telephone. The possibility of settlement, simplification of issues, the use of mediation and any other matters which the judge or conference attorney determines may aid in disposition of the appeal may be considered at the pre-argument conference.

(c) **Participating Judge Disqualified.** Any judge who participates in a pre-argument conference or becomes involved in mediation or settlement discussions pursuant to this rule will not sit on a panel that considers any aspect of the case.

(d) **Confidentiality.** Statements made and information exchanged during a pre-argument conference or mediation are confidential, except to the extent disclosed by the pre-argument conference order, and shall not be disclosed by the conference judge or conference attorney nor by parties in briefs or argument.

(e) **Pre-Argument Conference Order.** To effectuate the purposes and results of this rule, a judge or the panel clerk at the request of the conference attorney shall enter a pre-argument conference order.

RULE 8090- 1. ATTORNEYS - ADMISSION TO PRACTICE

(a) **Admission.** Any attorney admitted to practice before a United States district court within the Sixth Circuit or before the United States Court of Appeals for the Sixth Circuit and who is in good standing before such court shall be deemed admitted to practice before the BAP. An attorney not so admitted may apply to the panel for permission to appear in a particular appeal.

(b) **Notice of Appearance.** Any attorney who wishes to file documents or argue on behalf of any party shall file a notice of appearance on a form available from the panel clerk.