12-BK-015

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
THOMAS F. EAGLETON U.S. COURTHOUSE
111 SOUTH TENTH STREET -FIFTH FLOOR NORTH
ST. LOUIS, MISSOURI 63102

BARRY S. SCHERMER
CHIEF UNITED STATES BANKRUPTCY JUDGE

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January 30, 2013

Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544
e-mail: rules_comments@ao.uscourts.gov

Re: Proposed Federal Rule of Bankruptcy Procedure 8009

Dear Committee Members:

The Judges of the United States Bankruptcy Court for the Eastern District of Missouri join in Judge Robert Kressel's December 27, 2012 comments on the proposed bankruptcy appellate rule governing the assembly and transmission of the record on appeal of bankruptcy cases found in proposed Fed. R. Bankr. P. 8009. The proposed rule, as crafted, makes no allowance for courts such as the 8th Circuit Bankruptcy Appellate Panel ("BAP") that have moved beyond the, as Judge Kressel noted, "fairly archaic" process of designating the record on appeal and then having it assembled at the bankruptcy court level and transmitted to the appellate court. As Judge Kressel noted, the 8th Circuit BAP simply designates, by rule, the entire record of the proceedings below as the record on appeal. This is much more efficient and desirable in the age of electronic filing. Language in the proposed revised rule enabling the courts to deem the record of the proceedings at the bankruptcy court level to be the record on appeal in lieu of the assembly and transmittal procedures in proposed Rule 8009 would be very welcome and productive.

We would also like to voice our strong opposition to proposed revised Rule 8009(d) which would allow parties to designate statements of the appeal as the record on appeal in lieu of the actual record. This proposed rule, while well intentioned, would be extremely burdensome in the bankruptcy world given the myriad of issues that are disposed of along with the relatively loose standards for what constitutes a final appealable order in bankruptcy cases. This rule would require bankruptcy judges to review statements describing the appealed bankruptcy proceedings, make additions to the statements that they deem necessary, and approve the statements. It would cause much extra work for bankruptcy judges and their staff in their effort to keep up with the already large volume of work generated in their cases. Also, the benefits to the parties and the appellate court

when the parties designate the record on appeal is questionable at best.

Yours very truly,

/s/ Barry S. Schermer
Chief United States Bankruptcy Judge