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WASHINGTON, D.C. 20544

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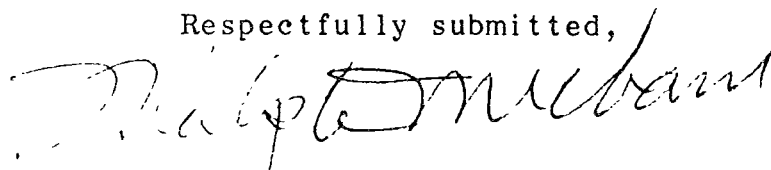
To the Honorable, The Chief Justice and the Associate
Justices of the Supreme Court of the United States:

By the direction of the Judicial Conference of the
United States, pursuant to the authority conferred by
28 U.S.C. 331, I have the honor to transmit herewith
for the consideration of the Court proposed amendments
to the Federal Rules of Appellate Procedure. The
Judicial Conference recommends that these rules
amendments be approved by the Court and transmitted to
the Congress pursuant to law.

The rules to be amended and approved are Appellate
Rules 1, 3, and 28(g) and new Rules 6 and 26.1.

Also transmitted for your assistance in consider-
ing these proposed amendments are an excerpt from the
Report of the Committee on Rules of Practice and
Procedure to the Judicial Conference and the Report of
the Advisory Committee on the Federal Rules of
Appellate Procedure. Explanatory Advisory Committee
Notes accompany the proposed amendments.

Respectfully submitted,



L. Ralph Mecham

Enclosures

**EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

TO THE CHIEF JUSTICE OF THE UNITED STATES, CHAIRMAN; AND
MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

II. Amendments to the Rules of Practice and Procedure

A. Federal Rules of Appellate Procedure

The Advisory Committee on the Federal Rules of Appellate Procedure has submitted to your Committee new Appellate Rules 6 and 26.1; technical and conforming amendments to Rules 1, 3, and 28(g). * * * The proposed new Rule 6 is designed to reflect changes made to Title 28 of the United States Code by the Bankruptcy Amendments and Federal Judgeship Act of 1984 (28 U.S.C. § 158). The new rule provides for new Appellate Form 5 for notice of appeal in Bankruptcy cases. The amendments to Appellate Rules 1 and 3 are designed to conform those rules with new Rule 6.

New Rule 26.1 would require a party to disclose its corporate affiliates so that a judge may ascertain whether he or she has any interest in any of the parties' related entities that would disqualify the judge from hearing the appeal. The amendment to Rule 28(g) would conform that rule to New Rule 26.1.

* * * * *

The above-references new rules and amendments have been submitted for public comment and appropriate minor changes made in response thereto. Your Committee approves these proposed rules and amendments.

* * * * *

Recommendation:

That the Judicial Conference approve new Rules 6 and 26.1 and amendments to Rules 1, 3, and 28(g) of the Federal Rules of Appellate Procedure and transmit them to the Supreme Court for its consideration with the recommendation that they be approved by the Court and transmitted to Congress pursuant to law.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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BANKRUPTCY RULES

To: Honorable Joseph F. Weis, Jr., Chairman
Standing Committee on Rules of Practice and Procedure

From: Honorable Jon O. Newman, Chairman
Advisory Committee on Appellate Rules

Subject: Explanation of Changes Made Subsequent to the Original
Publication of the August 1988 Preliminary Draft of Proposed
Amendments to the Federal Rules of Appellate Procedure &
Proposed New Amendments

Date: January 12, 1989

* * * The Advisory Committee requests that the Standing
Committee approve Rules 6, * * * 26.1 and Form 5 as well as conforming
amendments to Rules 1, 3, and 28(g) and forward those rules to the Judicial
Conference. * * *

* * * * *

The significant changes made by the Advisory Committee
subsequent to the original publication of the rules in August, 1988 are:

**Rule 6. Appeals in Bankruptcy cases from final judgments and orders
of district courts or of bankruptcy appellate panels**

The Committee Note has been amended to make it clear that 6(a)
applies when a district court refers non-core proceedings to a bankruptcy
court for findings of fact and conclusions of law but the district court
enters the first final order. In such instances the district court exercises
original jurisdiction and appeal lies directly to a circuit court. The
Committee Note has been amended further to note that the new rule does
not intend to alter the current state of the law concerning notices of
appeal in bankruptcy filed prior to entry of an order denying a petition for
rehearing. The Committee intends to address that question when it reaches
agreement upon the best way to address a similar problem in Rule 4(a)(4).

* * * * *

Honorable Joseph F. Weis, Jr.
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Rule 26.1 Corporate Disclosure Statement

Rule 26.1 has been changed to require disclosure only of corporations that have issued shares to the public. It has been further changed to require the filing of the statement with a parties response, petition or answer if such documents are filed prior to a party's principal brief.

Rule 28(g) Length of Briefs

Rule 28(g) is amended to state that page limits for briefs are exclusive of pages containing the disclosure statement.

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF APPELLATE PROCEDURE***

Rule 1. Scope of rules

1 (a) Scope of rules.—These rules govern procedure in appeals
2 to United States courts of appeals from the United States district
3 courts and the United States Tax Court; in appeals from bankruptcy
4 appellate panels; in proceedings in the courts of appeals for review
5 or enforcement of orders of administrative agencies, boards,
6 commissions and officers of the United States; and in applications
7 for writs or other relief which a court of appeals or a judge thereof
8 is competent to give. When these rules provide for the making of a
9 motion or application in the district court, the procedure for making
10 such motion or application shall be in accordance with the practice
11 of the district court.

* * * * *

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

*New matter is underlined; matter to be omitted is lined through.

FEDERAL RULES OF APPELLATE PROCEDURE

Rule 3. Appeal as of right—How taken

1 (a) Filing the notice of appeal.—An appeal permitted by law
2 as of right from a district court to a court of appeals shall be taken
3 by filing a notice of appeal with the clerk of the district court
4 within the time allowed by Rule 4. Failure of an appellant to take
5 any step other than the timely filing of a notice of appeal does not
6 affect the validity of the appeal, but is ground only for such action
7 as the court of appeals deems appropriate, which may include
8 dismissal of the appeal. Appeals by permission under 28 U.S.C. §
9 1292(b) and appeals by ~~allowance~~ in bankruptcy shall be taken in the
10 manner prescribed by Rule 5 and Rule 6 respectively.

* * * * *

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

Rule 6: Appeals by ~~allowance~~ in bankruptcy proceedings

1 (a) ~~Petition for allowance.~~—~~Allowance of an under section 24~~
2 ~~of the Bankruptcy Act¹ (11 U.S.C. § 47) from orders, decrees, or~~
3 ~~judgments of a district court involving less than \$500, or from an~~
4 ~~order making or refusing to make allowances of compensation or~~
5 ~~reimbursement under sections 250 or 498 thereof (11 U.S.C. § 650,~~
6 ~~§ 898) shall be sought by filing a petition for allowance with the~~
7 ~~clerk of the court of appeals within the time provided by Rule 4(a)~~

FEDERAL RULES OF APPELLATE PROCEDURE

8 for filing a notice of appeal, with proof of service on all parties to
9 the action in the district court. A notice of appeal need not be
10 filed.

11 (b) ~~Content of petition; answer.~~The petition shall contain a
12 statement of the facts necessary to an understanding of the
13 questions to be presented by the appeal; a statement of those
14 questions and of the relief sought; a statement of the reasons why in
15 the opinion of the petitioner the appeal should be allowed; and a
16 copy of the order, decree or judgment complained of and of any
17 opinion or memorandum relating thereto. Within 7 days after
18 service of the petition an adverse party may file an answer in
19 opposition. The petition and answer shall be submitted without oral
20 argument unless otherwise ordered.

21 (c) ~~Form of papers; number of copies.~~All papers may be
22 typewritten. Three copies shall be filed with the original, but the
23 court may require that additional copies be furnished.

24 (d) ~~Allowance of the appeal; fees; cost bond; filing of~~
25 ~~record.~~Within 10 days after the entry of an order granting
26 permission to appeal the appellant shall (1) pay to the clerk of the
27 district court the fees established by statute and the docket fee
28 prescribed by the Judicial Conference of the United States and (2)
29 file a bond for costs if required pursuant to Rule 7. The clerk of the
30 district court shall notify the clerk of the court of appeals of the
31 payment of the fees. Upon receipt of such notice the clerk of the

FEDERAL RULES OF APPELLATE PROCEDURE

32 ~~court of appeals shall enter the appeal upon the docket. The record~~
33 ~~shall be transmitted and filed in accordance with Rules 11 and~~
34 ~~12(b). A notice of appeal need not be filed.~~

Rule 6. Appeals in bankruptcy cases from final judgments and orders of district courts or of bankruptcy appellate panels

1 (a) Appeal from a judgment, order or decree of a district
2 court exercising original jurisdiction in a bankruptcy case.

3 An appeal to a court of appeals from a final judgment, order
4 or decree of a district court exercising jurisdiction pursuant to 28
5 U.S.C. § 1334 shall be taken in identical fashion as appeals from
6 other judgments, orders or decrees of district courts in civil actions.

7 (b) Appeal from a judgment, order or decree of a district
8 court or bankruptcy appellate panel exercising appellate jurisdiction
9 in a bankruptcy case.

10 (1) Applicability of other rules. All provisions of these
11 rules are applicable to an appeal to a court of appeals
12 pursuant to 28 U.S.C. § 158(d) from a final judgment, order or
13 decree of a district court or bankruptcy appellate panel
14 exercising appellate jurisdiction pursuant to 28 U.S.C.
15 § 158(a) or (b), except that:

16 (i) Rules 3.1, 4(a)(4), 4(b), 5.1, 9, 10, 11, 12(b), 13-
17 20, 22-23, and 24(b) are not applicable;

FEDERAL RULES OF APPELLATE PROCEDURE

18 (ii) the reference in Rule 3(c) to "Form 1 in the
19 Appendix of Forms" shall be read as a reference to
20 Form 5; and

21 (iii) when the appeal is from a bankruptcy
22 appellate panel, the term "district court" as used in any
23 applicable rule, means "appellate panel".

24 (2) Additional rules. In addition to the rules made
25 applicable by subsection (b) (1) of this rule, the following
26 rules shall apply to an appeal to a court of appeals pursuant
27 to 28 U.S.C. § 158(d) from a final judgment, order or decree
28 of a district court or of a bankruptcy appellate panel
29 exercising appellate jurisdiction pursuant to 28 U.S.C.
30 § 158(a) or (b):

31 (i) Effect of motion for rehearing on time for
32 appeal. If a timely motion for rehearing under
33 Bankruptcy Rule 8015 is filed in the district court or the
34 bankruptcy appellate panel, the time for appeal to the
35 court of appeals for all parties shall run from the entry
36 of the order denying the rehearing or the entry of the
37 subsequent judgment.

38 (ii) The Record on Appeal. Within 10 days after
39 filing the notice of appeal, the appellant shall file with
40 the clerk possessed of the record assembled pursuant to
41 Bankruptcy Rule 8006, and serve on the appellee, a
42 statement of the issues to be presented on appeal and a

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43 designation of the record to be certified and
44 transmitted to the clerk of the court of appeals. If the
45 appellee deems other parts of the record necessary, the
46 appellee shall, within 10 days after service of the
47 appellant's designation, file with the clerk and serve on
48 the appellant a designation of additional parts to be
49 included. The record, redesignated as provided above,
50 plus the proceedings in the district court or bankruptcy
51 appellate panel and a certified copy of the docket
52 entries prepared by the clerk pursuant to Rule 3(d) shall
53 constitute the record on appeal.

54 (iii) Transmission of the record. When the record
55 is complete for purpose of the appeal, the clerk of the
56 district court or the appellate panel, shall transmit it
57 forthwith to the clerk of the court of appeals. The
58 clerk of the district court or of the appellate panel shall
59 number the documents comprising the record and shall
60 transmit with the record a list of documents
61 correspondingly numbered and identified with
62 reasonable definiteness. Documents of unusual bulk or
63 weight, physical exhibits other than documents, and
64 such other parts of the record as the court of appeals
65 may designate by local rule, shall not be transmitted by
66 the clerk unless the clerk is directed to do so by a party
67 or by the clerk of the court of appeals. A party must

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68 make advance arrangements with the clerk for the
69 transportation and receipt of exhibits of unusual bulk or
70 weight. All parties shall take any other action
71 necessary to enable the clerk to assemble and transmit
72 the record. The court of appeals may provide by rule or
73 order that a certified copy of the docket entries shall be
74 transmitted in lieu of the redesignated record, subject
75 to the right of any party to request at any time during
76 the pendency of the appeal that the redesignated record
77 be transmitted.

78 (iv) Filing of the record. Upon receipt of the
79 record, the clerk of the court of appeals shall file it and
80 shall immediately give notice to all parties of the date
81 on which it was filed. Upon receipt of a certified copy
82 of the docket entries transmitted in lieu of the
83 redesignated record pursuant to rule or order, the clerk
84 of the court of appeals shall file it and shall
85 immediately give notice to all parties of the date on
86 which it was filed.

COMMITTEE NOTE

A new Rule 6 is proposed. The Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549, the Supreme Court decision in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S.

50 (1982), and the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, have made the existing Rule 6 obsolete.

Subdivision (a). Subdivision (a) provides that when a district court exercises original jurisdiction in a bankruptcy matter, rather than referring it to a bankruptcy judge for a final determination, the appeal should be taken in identical fashion as appeals from district court decisions in other civil actions. A district court exercises original jurisdiction and this subdivision applies when the district court enters a final order or judgment upon consideration of a bankruptcy judge's proposed findings of fact and conclusions of law in a non-core proceeding pursuant to 28 U.S.C. § 157(c)(1) or when a district court withdraws a proceeding pursuant to 28 U.S.C. § 157(d). This subdivision is included to avoid uncertainty arising from the question of whether a bankruptcy case is a civil case. The rules refer at various points to the procedure "in a civil case", see, e.g. Rule 4(a)(1). Subdivision (a) makes it clear that such rules apply to an appeal from a district court bankruptcy decision.

Subdivision (b). Subdivision (b) governs appeals that follow intermediate review of a bankruptcy judge's decision by a district court or a bankruptcy appellate panel.

Subdivision (b)(1). Subdivision (b)(1) provides for the general applicability of the Federal Rules of Appellate Procedure, with specified exceptions, to appeals covered by subdivision (b) and makes necessary word adjustments.

Subdivision (b)(2). Paragraph (i) provides that the time for filing a notice of appeal shall begin to run anew from the entry of an order denying a rehearing or from the entry of a subsequent judgment. The Committee deliberately omitted from the rule any provision governing the validity of a notice of appeal filed prior to the entry of an order denying a rehearing; the Committee intended to leave undisturbed the current state of the law on that issue. Paragraph (ii) calls for a redesignation of the appellate record assembled in the bankruptcy court pursuant to Rule 8006 of the Rules of Bankruptcy Procedure. After an intermediate appeal, a party may well narrow the focus of its efforts on the second appeal and a redesignation of the record may eliminate unnecessary material. The proceedings during the first appeal are included to cover the possibility that independent error in the intermediate appeal, for example failure to follow appropriate procedures, may be assigned in the court of appeals. Paragraph (iii) provides for the transmission of the record and tracks the appropriate subsections of Rule 11. Paragraph (iv) provides for the filing of the record and notices to the parties. Paragraph (ii) and Paragraph (iv) both refer to "a certified copy of the docket entries". The "docket entries" referred to are the docket entries in the district court or the bankruptcy appellate panel, not the entire docket in the bankruptcy court.

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Rule 26.1 Corporate Disclosure Statement

1 Any non-governmental corporate body party to a civil or
2 bankruptcy case or agency review proceeding and any non-
3 governmental corporate defendant in a criminal case shall file a
4 statement identifying all parent companies, subsidiaries (except
5 wholly-owned subsidiaries), and affiliates that have issued shares to
6 the public. The statement shall be filed with a party's principal
7 brief or upon filing a motion, response, petition or answer in the
8 court of appeals, whichever first occurs, unless a local rule requires
9 earlier filing. The statement shall be included in front of the table
10 of contents in a party's principal brief even if the statement was
11 previously filed.

COMMITTEE NOTE

The purpose of this rule is to assist judges in making a determination of whether they have any interests in any of a party's related corporate entities that would disqualify the judges from hearing the appeal. The committee believes that this rule represents minimum disclosure requirements. If a Court of Appeals wishes to require additional information, a court is free to do so by local rule. However, the committee requests the courts to consider the desirability of uniformity and the burden that varying circuit rules creates on attorneys who practice in many circuits.

Rule 28. Briefs

* * * * *

1 (g) Length of briefs.—Except by permission of the court, or as
2 specified by local rule of the court of appeals, principal briefs shall
3 not exceed 50 pages, and reply briefs shall not exceed 25 pages,

FEDERAL RULES OF APPELLATE PROCEDURE

4 exclusive of pages containing the corporate disclosure statement,
5 table of contents, tables of citations and any addendum containing
6 statutes, rules, regulations, etc.

* * * * *

COMMITTEE NOTE

The amendment provides that the corporate disclosure statement required by new rule 26.1 shall be treated similarly to tables of contents and tables of citations and shall not be counted for purposes of the number of pages allowed in a brief.

FEDERAL RULES OF APPELLATE PROCEDURE

Form 5. Notice of Appeal to a Court of Appeals from a Judgment or Order of a District Court or a Bankruptcy Appellate Panel

United States District Court for the

District of

<u>In re</u>)	
)	
.....,)	
<u>Debtor</u>)	
)	<u>File No.</u>
.....,)	
<u>Plaintiff</u>)	
)	
V.)	
)	
.....,)	
<u>Defendant</u>)	

Notice of Appeal to
United States Court of Appeals
for the Circuit

....., the plaintiff [or defendant or other party] appeals to the United States Court of Appeals for the Circuit from the final judgment [or order or decree] of the district court for the district of [or bankruptcy appellate panel of the circuit], entered in this case on, 19.... [here describe the judgment, order, or decree]

The parties to the judgment [or order or decree] appealed from and the names and addresses of their respective attorneys are as follows:

Dated
Signed
Attorney for Appellant

Address:
.....