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NEW AMENDMENTS TO FEDERAL RULE OF APPELLATE PROCEDURE 6: APPEAL IN A BANKRUPTCY

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On December 1, 2014, amendments to various federal rules of practice and procedure took effect. The only amendment to the Federal Rules of Appellate Procedure made three substantive changes to Rule 6, which deals with bankruptcy appeals: amending Rule 6(b)(2)(A)(ii) to remove any ambiguity regarding the obligation to file an amended notice of appeal, adding a new Rule 6(c) to address permissive direct appeals, and revising Rule 6 to account for electronic records.

Removing the Ambiguity Regarding Amended Notices of Appeal

This amendment addresses ambiguous language in subdivision (b)(2)(A)(ii) that could be read to require the filing of an amended notice of appeal whenever a ruling on a post-trial motion altered the prior judgment, even though the appeal did not challenge the alteration. The amendment eliminates the language that introduced the ambiguity and clarifies that an amended notice of appeal must be filed only if a party intends to challenge the alteration or amendment of the judgment or order.

Permissive Direct Appeals

Prior to the amendment, Rule 6 did not address permissive direct appeals from a bankruptcy court to a court of appeals under 28 U.S.C. § 158(d)(2).

The addition of subdivision (c) makes clear that the Federal Rules of Appellate Procedure apply to such appeals and expressly preserves bankruptcy rules concerning the availability of the record and stays pending appeal.

In bankruptcy appeals under Rule 6(b), the record will already have been compiled when a first appeal was taken to the district court or bankruptcy appellate panel, and Rule 6(b) therefore contains a streamlined procedure for re-designating that record at the next stage of appellate review. In a permissive direct appeal, however, the record must be compiled from scratch. Rule 6(c) therefore makes the procedure set forth in Part VII of the Bankruptcy Rules for compiling a record in appeals from the bankruptcy court to the district court or the bankruptcy appellate panel applicable to permissive direct appeals too.

Electronic Records

The Appellate Rules originally were drafted on the assumption that the record on appeal would be available only in paper form. The revision of Rule 6(b) and new Rule 6(c) recognize that in some appeals the record will be transmitted electronically. Under the amendments, the circuit clerk is required to note on the docket the date when the electronic record has been made

available, and that date then serves as the date of filing of the record.

The complete text of the amendments, including notes and commentary by the Advisory Committee on Appellate Rules, can be found in the [Communication](#) from the Chief Justice officially transmitting the amendments to Congress (April 25, 2014). ◆

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