

**UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE FIRST CIRCUIT**

IN RE GENERAL ORDERS OF THE
UNITED STATES BANKRUPTCY
APPELLATE PANEL FOR THE FIRST
CIRCUIT.

GENERAL ORDER NO. 1
November __, 2009

Before HAINES, Chief Judge, VOTOLATO, LAMOUTTE, de JESÚS, HILLMAN,
FEENEY, VAUGHN, BOROFF, DEASY, ROSENTHAL, KORNREICH, AND TESTER

WHEREAS, the Judicial Conference of the United States has approved amendments to the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, and the Federal Rules of Appellate Procedure (“collectively the “Federal Rules of Procedure”), which address the method by which time is calculated in the federal courts; and

WHEREAS, the Supreme Court of the United States has approved amendments to 39 Federal Rules of Bankruptcy Procedure which address the method by which time is calculated in the federal courts; and

WHEREAS, the President signed into public law the Statutory Time-Periods Technical Amendments Act of 2009 (Public Law No. 111-016, 2009 HR 1626), which act amends, *inter alia*, certain sections of the Bankruptcy Code, 11 U.S.C. § 101, et seq. effective December 1, 2009; and

WHEREAS, Federal Rule of Appellate Procedure 26, Federal Rules of Bankruptcy Procedure 8001, 8002, 8003, 8006, 8009, 8015, 8017, 9006, and Federal Rule of Civil Procedure 6, are among the rules being amended and affect practice before this Court; and

WHEREAS, the amended rules now count intermediate weekends and holidays for all time periods, with the time periods having been amended as follows: five day periods

are now seven days; ten day periods are now fourteen days; fifteen day periods are now fourteen days; twenty day periods are now twenty-one days; and twenty-five day periods are now twenty-eight days; and

WHEREAS, the Panel has reviewed its local rules of practice with the participation of the Clerk of the Court and has determined that changes to 1st Cir. BAP L.R. 8001-3, 8001-4(d), 8003-1(b), 8006-1(c), 8011-1(b), 8011(d)(2), and 8070-1(b)(1), as set forth below, are necessary to conform to the amendments to the federal rules; and

WHEREAS, the Court has determined that the December 1, 2009 effective date does not provide sufficient time to promulgate rules under the Rules Enabling Act, 28 U.S.C. § 2071, Fed. R. Civ. P. 83, and Fed. R. Bankr. P. 8018.

Accordingly, it is HEREBY ORDERED THAT:

- (1) The amendments to the Federal Rules of Procedure as defined in this General Order are adopted effective December 1, 2009.
- (2) The amendments shall govern all appeals thereafter commenced, and all time periods calculated in pending appeals subsequent to that date.
- (3) Until such time as the First Circuit BAP Local Rules are amended, the following rules are modified by this general order, as indicated below:

<u>Rule</u>	<u>Amendment</u>
8001-3	If an appeal has been docketed with the BAP, it may be dismissed by the parties in the manner set forth in Fed. R. Bankr. P. 8001(c)(2). An appeal may also be dismissed on motion of all appellants, if no response or opposition is filed within ten <u>fourteen</u> (10 <u>14</u>) days after service of the motion, on terms and conditions determined by the BAP.
8001-4(d)	(d) Challenges to Election. Any challenge to an election shall be brought by motion within ten <u>fourteen</u> (10 <u>14</u>) days after an election is filed. The motion shall be filed with the BAP unless the BAP has transmitted the appeal to the district court in which case the motion shall be filed with the district court.

- 8003-1(b) **(b) Response.** Unless the BAP orders otherwise, any party opposing a motion for leave to appeal an interlocutory judgment, order, or decree shall file its response with the bankruptcy court clerk within ~~ten~~fourteen (~~10~~14) days of service of the motion. Unless the BAP orders otherwise, the filing of any paper prior to making the election, including a response to the motion for leave to appeal, terminates the time remaining in the thirty (30) day period to elect to have the appeal heard in the district court. See 1st Cir. BAP L.R. 8001-4(b)(2)(A).
- 8006-1(c) **(c) Challenges to Designation.** Challenges to a designation shall be brought by motion within ~~ten~~fourteen (~~10~~14) days of the filing of the designation. The BAP shall decide the motion.
- 8011-1(b) **(b) Responses.** Unless the BAP orders otherwise, responses or opposition to a motion shall be filed within ~~ten~~fourteen (~~10~~14) days after service of the motion.
- 8011(d)(2) **(2) Reconsideration.** A BAP Clerk order shall be subject to reconsideration by a single judge or a three-judge Panel if, within ~~ten~~fourteen (~~10~~14) days of service of notice of the entry of the order, a party adversely affected thereby moves for reconsideration.
- 8070-1(b)(1) **(1) Discretion to Reinstate.** The BAP may reinstate the appeal upon motion by a defaulting party, within ~~ten~~fourteen (~~10~~14) days of service of the order. Such a motion shall not be allowed absent a verified statement by counsel for the defaulting party or by the defaulting party, if pro se, showing special circumstances justifying the failure to comply with the requirements of the Federal Rules of Bankruptcy Procedure or these rules.
- (2) This General Order shall automatically terminate on the effective date of any future amendments to the First Circuit BAP Local Rules.

For the Panel:

Mary P. Sharon,
Clerk of Court

Dated: November 6, 2009