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**UNITED STATES DISTRICT COURT**  
NORTHERN DISTRICT OF CALIFORNIA

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May 15, 1995

**MEMORANDUM**

**TO:** All General Order Book Holders  
**FROM:** Rich Wieking *RW*  
**SUBJECT:** General Order No. 24  
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It has been brought to our attention that some book holders may not have received the attachment to General Order No. 24 when distributed in 1985. A copy of this attachment, entitled "Amended Order Establishing and Continuing the Bankruptcy Appellate Panel of the Ninth Circuit," is being provided to you now.

Attachment

**JUDICIAL COUNCIL OF THE NINTH CIRCUIT**

**AMENDED ORDER ESTABLISHING AND CONTINUING  
THE BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT**

**1. ESTABLISHMENT OF BANKRUPTCY APPELLATE PANEL**

(a) Pursuant to 28 U.S.C. § 158(b) (1), the judicial council hereby establishes and continues a bankruptcy appellate panel to hear and determine appeals from judgments, orders, and decrees entered by bankruptcy judges from districts within the Ninth Circuit, subject to the limitations set forth in subparagraphs (b)-(2).

(b) The bankruptcy appellate panel may hear and determine only those appeals arising from districts that have authorized such appeals to be decided by bankruptcy appellate panels pursuant to 28 U.S.C. § 158(b) (2).

(c) The bankruptcy appellate panel may hear and determine only those appeals in which all parties to the appeal consent thereto pursuant to paragraph (2) of this order.

(d) the bankruptcy appellate panel may hear and determine appeals from final judgments, orders, and decrees entered by bankruptcy judges and, with leave of the district court or the bankruptcy appellate panel, appeals from interlocutory orders and decree entered by bankruptcy judges.

(e) The bankruptcy appellate panel may hear and determine appeals from judgments, orders, and decrees entered after the district from which the appeal arises has issued an order referring bankruptcy cases and proceedings to bankruptcy judges pursuant to 28 U.S.C. § 157 (a); and appeals transferred to the district court from the previous Ninth Circuit bankruptcy appellate panel by sec. 115(b) of P.L. 98-353. The bankruptcy appellate panel may not hear and determine appeals from judgments, orders, and decrees entered by bankruptcy judges between December 25, 1982 and July 10, 1984 under the Emergency Bankruptcy Rule.

## **2. FORM AND TIME OF CONSENT**

(a) When a notice of appeal is filed with the clerk of the bankruptcy court, the appeal shall be referred immediately to the bankruptcy appellate panel. All parties to the appeal shall be notified of the filing and reference within the time and in the manner provided for in Paragraph 3 of this order. Unless a party to the appeal files a written objection with the clerk of the bankruptcy appellate panel within twenty-one (21) days from the date of the filing of the notice of appeal the parties will be deemed to have consented to the hearing and the disposition of the appeal by the bankruptcy appellate panel pursuant to the 28 U.S.C. § 158(b) (1).

## **3. NOTICE OF IMMEDIATE REFERENCE TO BANKRUPTCY APPELLATE PANEL**

(a) Within three days after the filing of a notice of appeal, the clerk of the bankruptcy court shall serve upon all parties to the appeal a copy of the notice of appeal and a copy of this order. A copy of the notice of appeal shall also be transmitted to the clerk of the bankruptcy appellate panel. Upon receipt of the notice of appeal, the clerk of the bankruptcy appellate panel shall notify the parties of the procedures and requirements relating to practice before the bankruptcy appellate panel.

(b) Upon timely receipt of a written objection to an appeal being heard and determined by the bankruptcy appellate panel, the clerk of the bankruptcy appellate panel shall forthwith transfer the case to the appropriate district court and shall notify all parties to the appeal and the clerk of the bankruptcy court of the transfer. Any question as to the timeliness of an objection shall be referred by the clerk to a bankruptcy appellate panel motions panel for determination.

## **4. MOTIONS DURING OBJECTION PERIOD**

All motions relating to the appeal shall be filed with the bankruptcy appellate panel unless the case has been transferred to a district court. The bankruptcy appellate panel may not dismiss or render a final disposition of an appeal within twenty-one days from the date of the filing of the notice of appeal but may otherwise fully consider and dispose of all motions. During these 21 days, any party may request of the bankruptcy appellate panel that a dispositive motion be transferred to the appropriate district court for consideration and disposition.

**5. PANELS**

Each appeal shall be heard and determined by a panel of three judges from among those listed pursuant to paragraph 5, provided however that a bankruptcy judge shall not participate in an appeal originating in a district for which the judge is appointed or designated under 28 U.S.C. § 152.

**6. MEMBERSHIP OF BANKRUPTCY APPELLATE PANEL**

(a) The judicial council shall designate bankruptcy judges to serve on the bankruptcy appellate panel after considering the recommendation of the Bankruptcy Courts Advisory Committee of the judicial council. Before submitting its recommendations as to the number and identity of judges to be appointed, the committee shall survey the bankruptcy judges in the circuit and an appropriate selection of attorneys.

(b) When a three-judge panel cannot be formed from the judges designated under subparagraph (a) to hear a case because judges from that list have recused themselves, are disqualified from hearing the case because it arises from their district, or are otherwise unable to participate, the Chief Judge of the Court of Appeals for the Ninth Circuit may designate one or more other bankruptcy judge(s) from the circuit to hear the case.

**7. PRESIDING JUDGE**

The members of the bankruptcy appellate panel by majority vote shall select one of their number to serve as presiding judge.

**8. RULES OF PROCEDURE**

(a) Practice before the bankruptcy appellate panel shall be governed by Part VIII of the Rules of Bankruptcy Procedure, except as provided in this order or by rule of the bankruptcy appellate panel adopted under subparagraph (b).

(b) The bankruptcy appellate panel may establish rules not inconsistent with the Rules of Bankruptcy Procedure governing practice and procedure before the panel.

**9. PLACES OF HOLDING COURT**

(a) The bankruptcy appellate panel may conduct hearings at such times and places as it determines to be appropriate.

(b) The bankruptcy appellate panel is hereby authorized to use courtrooms of the United States Court of Appeals in San Francisco, Pasadena, and Portland, and courtrooms of the United States District Courts in all districts in the Ninth Circuit.

**10. CLERK AND OTHER EMPLOYEES**

The bankruptcy appellate panel shall select and hire the Clerk of the bankruptcy appellate panel, staff attorneys, and other necessary assistants. The bankruptcy appellate panel shall determine the location of the principal office of the clerk. The Clerk of the bankruptcy appellate panel may hire necessary assistants. Each judge on the bankruptcy appellate panel may hire an additional law clerk.

**11. EFFECTIVE DATE**

This amended order shall become effective on May 20, 1985, provided, however, that all prior actions of the bankruptcy appellate panel not inconsistent herewith are not affected by this order.

IT IS SO ORDERED.

DATED: May 20, 1985

/s/ JAMES R. BROWNING  
James R. Browning, Chief Judge  
for the Judicial Council