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**To:** [RulesCommittee Secretary](#)  
**Subject:** Proposed new Part VIII bankruptcy rule  
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I write to suggest a new rule for Part VIII of the Bankruptcy Rules. The rule would address substitution of parties in bankruptcy appeals to district courts and BAPs, particularly when a party dies.

No rule currently addresses the death of a party to a bankruptcy appeal pending in the district court or a BAP. Several other rules address the death of a party and subsequent substitution: Bankruptcy Rule 1016, Civil Rule 25, Bankruptcy Rule 7025 (which applies Civil Rule 25), and Appellate Rule 43. But none of these rules applies to an appeal from a bankruptcy court to a district court or BAP. Rule 1016 addresses only debtors in bankruptcy cases. Civil Rule 25 is concerned only with actions in the district court and (through Bankruptcy Rule 7025) adversary proceedings in the bankruptcy court. Appellate Rule 43 addresses only appeals from a district court to a court of appeals.

Case law on the subject appears to be minimal. A quick Westlaw search turned up only *JH, Inc. v. Morabito (In re Morabito)*, 596 B.R. 718 (D. Nev. 2019). In *JH*, the court granted a motion to substitute parties and cited both Civil Rule 25 and Appellate Rule 43, assuming without discussion that those rules applied.

The *JH* court's assumption was incorrect. Neither rule applies to a bankruptcy appeal pending in a district court. Under Appellate Rule 1(a)(1), the appellate rules "govern procedure in the United States courts of appeals," not the district courts. Under Civil Rule 81(a)(2), the Civil Rules apply to bankruptcy cases "to the extent provided by the Federal Rules of Bankruptcy Procedure," and the Bankruptcy Rules apply Civil Rule 25 only in adversary proceedings, not appeals. Bankruptcy Rule 8001(a) says that the Part VIII rules "govern the procedure in a United States district court and a bankruptcy appellate panel on appeal from a judgment, order, or decree of a bankruptcy court." No Part VIII rule governs the death and substitution-of-parties problem.

People die every day. Some are parties to bankruptcy appeals in district courts and BAPs. A new Part VIII rule, perhaps a modified version of Appellate Rule 43, would fill the current gap in the Bankruptcy Rules and would provide needed guidance to district courts and BAPs.

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