

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS



**BANKRUPTCY APPEAL PROCEDURES**

*Revised March, 2001*

## LOCAL BANKRUPTCY RULES

### **LBR 8006.1 Duty of Bankruptcy Clerk to Include Copies of Items in the Record; Preparation and Transmittal of Duplicate Volume of these Copies.**

(a) The clerk of the bankruptcy court shall include in the record on appeal, in this order, copies of (1) the notice of appeal, (2) the judgment, order, or decree appealed from, (3) any opinion, findings of fact, and conclusions of law of the bankruptcy court, and (4) the docket sheet. The copies shall be assembled as a separate volume of the record. After the pages in this volume are numbered in the manner prescribed by LBR 8006.4, the clerk shall prepare a duplicate copy of this volume. The duplicate copy shall be transmitted with the record on appeal to the clerk of the district court.

(b) The district clerk shall transmit to the district judge to whom the appeal is assigned the duplicate copy required by subpart (a) of this rule. This copy shall not be part of the record on appeal that is released pursuant to LBR 8006.6.

#### ***Procedures:***

- 1. The bankruptcy clerk will prepare two identical “mini records” consisting of copies of the documents listed above. If a notice of cross appeal is filed, it will be placed in the mini record after the notice of appeal. In preparing each record, the bankruptcy clerk will: a) assemble the documents in the order listed above; b) sequentially number the documents in the bottom right corner of each page; c) two hole punch the documents; d) secure the documents in a durable pressboard binder; e) affix an index to the top of the record; and f) designate the binder as “Volume 1”.*
- 2. The bankruptcy clerk will transmit each mini record to the district clerk, accompanied by an original and one copy of a transmittal letter and bankruptcy civil cover sheet. The transmittal letter will also be a certification of the record.*
- 3. The district clerk will file stamp the transmittal letters and receive stamp the civil cover sheets and both copies of the mini record.*
- 4. The district clerk will forward one mini record and copy of the transmittal letter to the presiding judge. The district clerk will fasten the original civil cover sheet and transmittal letter inside a yellow civil case file and note on the transmittal that the mini-record is filed under separate cover. The district clerk shall place the civil cover sheet copy in the press box.*
- 5. If a party does not designate items for inclusion in the record within the time prescribed by Fed. R. Bankr. P. 8006, the bankruptcy clerk shall transmit the mini record to the district clerk according to these procedures. The bankruptcy clerk shall note on the transmittal letter that the party did not designate any items for inclusion in the record.*

## **LBR 8006.2 Duty of Parties to Provide Copies of Items for Inclusion in the Record.**

(a) A party who, pursuant to Fed. R. Bankr. P. 8006, has designated items for inclusion in the record on appeal shall provide copies of the designated items to the clerk of the bankruptcy court within 20 days of filing the designation. A party who has designated a transcript of any proceeding or part thereof shall provide the clerk a copy of the transcript within 5 days of the date the reporter files the transcript in accordance with Fed. R. Bankr. P. 8007(a). A bankruptcy judge or, by delegation from that judge, the clerk of the bankruptcy court, may for good cause grant reasonable extensions of the deadlines prescribed by this rule.

(b) The copies must be organized according to the sequence in which they are designated, two-hole punched at the top, and secured in a durable binder. If the copies are too voluminous to be included in a single volume, they must be divided into two or more volumes. Each volume must be secured in the required manner and contain a designation on its cover that identifies it by its case caption and bankruptcy court case and/or adversary proceeding number, and by volume number.

(c) Each page of each volume must measure 8½ x 11 inches. Non-documentary exhibits (e.g., videotapes and other physical exhibits) and oversized exhibits (e.g., maps and schematic drawings) that are included must be placed in an envelope that measures 8½ x 11 inches.

### **Procedures:**

1. *A party must provide copies of each item he/she designates to the bankruptcy clerk within 20 days of filing the designation of record and provide copies of transcripts of any proceeding within 5 days of the date the court reporter files the transcript.*
2. *If a transcript is not filed in the bankruptcy clerk's office, the bankruptcy clerk will note this deficiency on the transmittal form but will not delay transmitting the appeal to district court.*
3. *Each party should: a) assemble the items he/she designated in the order they are designated, with a copy of the designation on top; b) two-hole punch the items at the top; and c) fasten the items in a durable pressboard binder with metal or other durable fasteners at the top.*
4. *Pages should be single-sided and must measure 8½ x 11 inches. A party must place any non-documentary exhibit or oversized exhibit in an 8½ x 11 inch envelope and secure it in the binder in the order it is designated.*
5. *If the designated record is voluminous (more than 250 pages), the party must prepare multiple binders consisting of fewer than 250 pages each.*
6. *On a white label in the center of each binder, the party must clearly write or type: a) the caption of the case; b) the bankruptcy case number and/or adversary proceeding number; c) "DESIGNATION FOR \_\_\_\_\_" (appellant or appellee); and d) the volume number, starting with "Volume 1".*
7. *If a party submits a record incorrectly, the bankruptcy clerk will note the deficiency on the transmittal form but will not delay transmitting the appeal to district court.*
8. *If a party designates items that are not part of the bankruptcy record, the bankruptcy clerk will annotate this on the transmittal form.*
9. *The bankruptcy clerk will renumber each volume as appropriate when preparing the record for transmission to the district clerk.*

### **LBR 8006.3 Duty of Bankruptcy Clerk When Party Fails to Provide Copies of Designated Items; Prepayment Requirement.**

(a) If a party who has designated items for inclusion in the record on appeal fails to provide copies of the items designated to the clerk of the bankruptcy court within the time prescribed by LBR 8006.2(a), the clerk shall, subject to subpart (b) of this rule, prepare the party's part of the record in accordance with Fed. R. Bankr. P. 8006 and LBR 8006.2.

(b) The party must prepay the clerk's costs of preparing the party's part of the record, according to the fees prescribed by law. If the party fails to make the required prepayment within 10 days of receipt of notice of the required amount, the bankruptcy clerk is excused from the obligations imposed by Fed. R. Bankr. P. 8006 and subpart (a) of this rule. When the record is transmitted to the district clerk, the clerk of the bankruptcy court shall note the party's failure to make the required payment as the reason for not including the party's designations in the record on appeal.

#### ***Procedures:***

- 1. If a party does not provide copies of the designated items to the bankruptcy clerk within 20 days of filing the designation, the bankruptcy clerk will send a notice to the party instructing the party to: a) provide the copies immediately, or b) submit payment in an amount determined by the bankruptcy clerk to be the appropriate fee for copying the record.*
- 2. If the party provides copies of the designated items after notice from the bankruptcy clerk, the bankruptcy clerk will prepare the record as required in LBR 8006.4. If the party does not provide the copies but pays the fee, the bankruptcy clerk will make the requisite copies and proceed as directed in LBR 8006.4.*
- 3. If a party neither provides copies of the designated record nor prepays all copy charges within 10 days of receiving notice from the bankruptcy clerk, the bankruptcy clerk will transmit the mini record (prepared pursuant to LBR 8006.1) to the district clerk along with a transmittal letter noting this deficiency. The district clerk will forward the mini record and transmittal letter to the district judge and wait for further instructions.*
- 4. If a party provides a designation of record and/or copies of the designated record to the bankruptcy clerk **after** the bankruptcy clerk has transmitted the mini record to the district court, the bankruptcy clerk will notify the district judge of this fact by filing a transmittal letter with the district clerk's office and wait for further instructions.*
- 5. If a party files an untimely appeal, with or without the designated record, the bankruptcy clerk will only submit two copies of the mini record to the district clerk along with an original and one copy of a transmittal letter that notes the party's failure to file a timely appeal, and an original and one copy of the civil cover sheet.*

#### **LBR 8006.4 Duty of Bankruptcy Clerk to Number the Record.**

The clerk of the bankruptcy court shall consecutively number each page of the record on appeal. The volume that contains the items required by LBR 8006.1 shall be designated as the first volume. The first page of the first volume shall be numbered as “1,” and succeeding pages shall be numbered sequentially through the last page of the entire record (*i.e.*, the numbering system must not re-start with each succeeding document or volume of the record). Index pages required by LBR 8006.5 shall not be numbered. An envelope that contains a non-documentary or oversized exhibit shall be numbered as if it were a single page.

#### ***Procedures:***

1. *The bankruptcy clerk will label the mini record “Volume 1”, the first volume of records designated by a party “Volume 2”, the second volume of records designated by a party “Volume 3”, etc. until all volumes are numbered. [Note: the volume numbers assigned by the bankruptcy clerk will differ from the volume numbers assigned by the parties.]*
2. *The bankruptcy clerk will assign each bound transcript a separate volume number and put it in the record in the order it is designated.*
3. *A party’s designation of record is to be included as the first document in each volume of that party’s designated record. It will serve as the index for all records designated by that party. The bankruptcy clerk will note on the designation of record the page numbers in the record where the party’s designated items can be found.*
4. *The bankruptcy clerk will number each page of the record (including any bound transcript) sequentially in the bottom right corner of the page, beginning with the mini-record. The indexes shall not be numbered.*
5. *If a supplemental record must be filed for any reason, the bankruptcy clerk will prepare the record according to the procedures listed in LBR 8806.2 and will label the binder “supplemental record”. The pagination of the supplemental record will begin with “1”. A copy of the designation of record with the supplemental document highlighted will serve as the index to the supplemental record.*

## **LBR 8006.5 Duty of Bankruptcy Clerk to Index the Record.**

When the clerk of the bankruptcy court transmits the record on appeal to the district clerk, the bankruptcy clerk shall include as the first documents in the first volume of the record—

(a) an index, on a form prepared by the clerk, that notes the page numbers in the record where copies of (1) the notice of appeal, (2) the judgment, order, or decree appealed from, (3) any opinion, findings of fact, and conclusions of law of the bankruptcy court, and (4) the docket sheet can be found; and

(b) an index, on copies of each party's designation of items for inclusion in the record, that notes the page numbers in the record where the parties' designated items can be found.

### ***Procedures:***

- 1. The bankruptcy clerk will prepare an index that notes the beginning page number of each document in the mini record. The index will be included as the first document of the mini record, but it will not be given a page number.*
- 2. The bankruptcy clerk will prepare an index for each party's designated items by noting the beginning page number for each document on a copy of the designation of record. These indexes will be placed in the mini record right after the index of the mini record.*

## **LBR 8006.6 Release, Circulation, and Return of Record on Appeal.**

(a) After the clerk of the district court enters the appeal on the docket, the clerk shall release the record on appeal to the attorney for the appellant at the appellant's request, upon execution of a receipt in a form approved by the clerk. If there are more than one appellant and the appellants are represented by separate attorneys, they must designate one attorney to take custody of the record.

(b) On the date the brief of the appellant is filed with the clerk of the district court, the attorney who took custody of the record must deliver the record to the attorney for the appellee. If there are more than one appellee and the appellees are represented by separate attorneys, they must designate one attorney to take custody of the record. The record must be transmitted by a method calculated to effect delivery within 2 business days. The attorney for the appellant shall promptly deliver to the clerk, on an approved form, proof that the record has been sent to the attorney for the appellee. The appellant shall bear the initial cost of delivering the record to the appellee, subject to recovery of this expense as a taxable cost pursuant to Fed. R. Bankr. P. 8014.

(c) If the appellant does not request release of the record on appeal, the appellee may do so after the appellant's brief is filed. The clerk of the district court shall release the record on appeal upon execution of a receipt in a form approved by the clerk. If there are more than one appellee and the appellees are represented by separate attorneys, they must designate one attorney to take custody of the record.

(d) When the attorney for the appellee receives a record delivered by the attorney for the appellant, the attorney for the appellee shall promptly deliver to the clerk, on an approved form, proof that the record has been received.

(e) In any case in which the attorney for the appellee has obtained custody of the record, the attorney shall, on the date the brief of the appellee is filed with the clerk of the district court, return the record to the clerk. The record must be transmitted by a method calculated to effect delivery within 2 business days. The attorney for the appellee shall promptly deliver to the clerk, on an approved form, proof that the record has been sent to the clerk. The clerk shall acknowledge receipt of the record on an approved form. The appellee shall bear the initial cost of returning the record to the clerk, subject to recovery of this expense as a taxable cost pursuant to Fed. R. Bankr. P. 8014.

(f) If a party seeks the release of the record on appeal in a manner not otherwise prescribed by this rule, the party must move for such relief from the district judge to whom the appeal is assigned.

## ***Procedures:***

1. *After an appeal is entered on the docket in the district court, the district clerk will release the record to an attorney for the appellant **on request**.<sup>1</sup> The attorney designated by the appellant to receive the record must sign a “Notice of Transfer of the Record on Appeal” form. On the form, the attorney must certify that he/she has been designated by the appellant to receive the record. A person other than the attorney may sign for the record “by permission” if expressly given authority to do so by the attorney. The district clerk will enter the notice form on the docket and place it in the case file.*
2. *On the date the appellant files a brief with the district clerk, the designated attorney for the appellant must send the record to the designated attorney for the appellee<sup>2</sup> by a method calculated to effect delivery within 2 business days. The attorney for the appellant shall complete a notice form and file it with the district clerk at the time of filing the brief. The district clerk will enter the notice form on the docket and place it in the case file.*
3. *When the designated attorney for the appellee receives the record delivered by the attorney for the appellant, the attorney for the appellee must complete a notice form and file it with the district clerk. The district clerk will enter the notice form on the docket and place it in the case file.*
4. *If the appellant does not request the record on appeal, the appellee may do so after the appellant’s brief is filed. The district clerk will release the record to the attorney for the appellee **on request**.<sup>3</sup> The designated attorney for the appellee must sign a notice form and file it with the district clerk. The district clerk will enter the notice form on the docket and place it in the case file.*
5. *The attorney for the appellee must return the record to the district clerk within 2 business days of filing the appellee’s brief along with a completed notice form. The district clerk will enter the notice form on the docket and place it in the case file.*
6. *The district clerk will acknowledge receipt of the record from the appellee by completing a notice form, entering it on the docket, and placing it in the case file.*
7. *The district clerk will not release the record on appeal in any other manner unless directed to do so by the presiding district judge.*

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<sup>1</sup>If there is more than one appellant and the appellants are represented by separate attorneys, the attorney who requests the record must be the attorney designated by all appellants to receive the record. By requesting the record (either in person or through a third party), the attorney represents that he/she is the designated attorney.

<sup>2</sup> If there is more than one appellee and the appellees are represented by separate attorneys, the attorney for the appellant must determine which attorney has been designated by all appellees to receive the record.

<sup>3</sup>If there is more than one appellee and the appellees are represented by separate attorneys, the attorney who requests the record must be the attorney designated by all appellees to receive the record. By requesting the record (either in person or through a third party), the attorney represents that he/she is the designated attorney.