

NOTICE OF APPEAL

A party in a bankruptcy case who thinks the judge has decided a matter incorrectly has a right to appeal any final judgment, order, or decree of the judge. When a matter is appealed, another judge, or a group of three judges, will review the original judge's ruling. The first step in exercising this right to have the original decision reexamined is the filing of a notice of appeal.

I. APPLICABLE LAW AND RULES

Appeals in bankruptcy cases are governed by section 158 of title 28, United States Code (the Judicial Code), and by Part VIII of the Federal Rules of Bankruptcy Procedure (referred to as “Bankruptcy Rules” or “Fed. R. Bankr. P.”). Section 158 of title 28 establishes two paths for appeal in bankruptcy cases. If the federal judicial circuit in which the bankruptcy court is located has established a bankruptcy appellate panel (BAP), an appeal may be considered and ruled on by a BAP composed of three bankruptcy judges from districts other than the one in which the appeal originated. 28 U.S.C. § 158(b). If the circuit has no BAP, an appeal will go to a federal district court judge in the district in which the bankruptcy court is located. 28 U.S.C. § 158(a).

If there is a BAP, but the appellant (the party filing the appeal) or any other party wants the appeal decided by a United States district court judge, the party has the right to have the appeal heard by a district judge, rather than the BAP. 28 U.S.C. § 158(c). The appellant can exercise this right only by filing a separate statement of election at the time of filing the notice of appeal. Fed. R. Bankr. P. 8001(e), 28 U.S.C. § 158(c)(1)(A). Any other party can exercise the right to elect district court consideration of the appeal by filing a separate statement of election within 30 days after service of the notice of appeal. 28 U.S.C. § 158(c)(1)(B).

There is a right to appeal only a “final” judgment, order, or decree. 28 U.S.C. § 158(a)(1). This is a legal concept that means a judgment, order, or decree finally disposing of the matter before the court. All other orders and decrees in the case are called “interlocutory.” Most orders in a bankruptcy case are interlocutory. If a party wants to appeal an interlocutory order, the party must first obtain permission from the appellate court. 28 U.S.C. § 158(a)(3). To request this permission, the party must file a notice of appeal together with a motion for leave to appeal explaining why the appeal should be considered at the current stage in the case rather than waiting until there is a “final” order. Fed. R. Bankr. P. 8001(b), 8003(a).

One kind of interlocutory order, however, is immediately appealable. Under 28 U.S.C. § 158(a)(2), which was enacted in 1994, there is a right to immediate appeal of any order issued in a chapter 11 case extending or reducing the time period during which only the debtor has a right to file a plan of reorganization – often referred to as an “exclusivity order.”

The notice of appeal must be filed within 14 days of the date of the entry on the docket of the judgment, order, or decree appealed from. Fed. R. Bankr. P. 8002(a). The docket is the

official record maintained by the clerk of documents filed, actions taken, and judgments and orders signed in the case. Fed. R. Bankr. P. 5003(a). After the judge has signed an order, it is entered on the docket. Fed. R. Bankr. P. 9021. Bankruptcy Rule 5003(a) also specifies that the docket must contain a notation of the date of entry of every judgment or order. Bankruptcy Rule 9022 requires the clerk to give notice to the parties of the entry of a judgment or order; however, the 14-day period for filing a notice of appeal will run from the date of entry, even if the clerk fails to perform this noticing duty. Under some circumstances the court may grant an extension of the time for filing a notice of appeal. Fed. R. Bankr. P. 8002(c).

After the court has issued a judgment or order in a proceeding, a party may file a motion requesting the judge to alter or amend the ruling. Filing such a motion stops the running of the 14-day period for filing an appeal. A new 14-day period for filing an appeal begins for all parties when the order disposing of the last such motion is entered on the docket. Fed. R. Bankr. P. 8002(b). In order to challenge an amendment or alteration of the judgment, a party must file a notice of appeal within 14 days of the entry of the order altering or amending the judgment. If a party has filed a notice of appeal prior to disposition of a motion to amend or alter the judgment, the party must amend the previously filed notice of appeal in order to challenge the amendment or alteration of the judgment. Fed. R. Bankr. P. 8002(b).

A notice of appeal may have been filed before any motion was filed and may be filed during the pendency of a motion to alter or amend the judgment. Such a notice of appeal, however, does not become effective until the entry of the order disposing of the last outstanding motion, at which time the notice of appeal is deemed filed after such entry and on the same day. Fed. R. Bankr. P. 8002(a) and (b).

The filing of a notice of appeal does not stay the effect of the original order or judgment. A stay must be requested by a separate motion. Fed. R. Bankr. P. 7062, 8005. Certain judgments, however, cannot be enforced for 14 days. Fed. R. Bankr. P. 7062.

In certain circumstances, a party may request a direct appeal to the court of appeals, bypassing the BAP or the district court. 28 U.S.C. § 158(d)(2). The party must file with the bankruptcy court a notice of appeal, in addition to either a certification of the direct appeal or a request for the certification. Fed. R. Bankr. P. 8001(f)(1). The grounds for the required certification, which may be made by the parties or by the judge, are set out in section 158(d)(2) of the Judicial Code. 28 U.S.C. § 158(d)(2), Fed. R. Bankr. P. 8001(f). Certification also may be sought from the BAP or district court as long as it is requested not later than 60 days after entry of the judgment, order, or decree. 28 U.S.C. §§ 158(d)(2)(B),(E). Unless the court in which the original appeal is pending issues a stay, neither the request for certification nor the certification itself stops the original appeal to the BAP or the district court and the parties must continue to file papers in that court. § 158(d)(2)(D). The court of appeals has discretion in deciding whether to accept the direct appeal, and therefore a petition for permission to appeal, accompanied by the certification, must be filed with the court of appeals not later than 14 days

after the certification is entered on the docket of the bankruptcy court. 28 U.S.C. § 158(d)(2), Federal Rule of Appellate Procedure 5(a).

The clerk is required to charge a \$5 fee¹ for filing a notice of appeal. 28 U.S.C. § 1930(c). There also is a \$293 appeal docketing fee which is collected at the time the notice of appeal is filed. Item No. 14, Bankruptcy Court Miscellaneous Fee Schedule. (The Bankruptcy Court Miscellaneous Fee Schedule is prescribed by the Judicial Conference of the United States under authority granted in 28 U.S.C. § 1930(b).)

II. DIRECTIONS

1. The Official Form should be used with alterations as may be appropriate. Fed. R. Bankr. P. 9009. The form will require retyping in order to insert all the required information. The form may be adapted for use by multiple parties who file a joint notice of appeal.

2. The caption should be placed at the top of the page. The caption shown is Official Form 16B, Caption (Short Title). The party intending to file the notice of appeal, however, should choose the form of caption that is appropriate to the action, either an adversary proceeding (Caption Form 16D) or a matter that arose in the main bankruptcy case (Caption Forms 16A or 16B).

3. The party intending to file the notice of appeal is referred to below as the “appellant.”

4. The appellant's name should be inserted in the first blank space in the body of the notice.

5. Immediately following the comma after the appellant's name, the appellant should state the appellant's role in the case (for example, “plaintiff,” “defendant,” “debtor,” “creditor,” etc.).

6. Immediately following the phrase “bankruptcy judge,” the appellant should provide a brief description of the bankruptcy court order being appealed (for example, “Order Declaring Debt to Debtor's Former Spouse Nondischargeable”).

7. Immediately following the phrase “entered in this,” the appellant should state the type of proceeding in which the judgment, order, or decree appealed from was entered. For example, the proceeding may be an adversary proceeding, an objection to confirmation of a plan

¹ The fees cited in this Instruction are current as of November 1, 2011. You should check the court's website, the Judiciary website at www.uscourts.gov, or the Miscellaneous Fee Schedule, which is published as an appendix after section 1930 of the Judicial Code (28 U.S.C. § 1930), for the current fees.

of reorganization, or an application for compensation.

8. The appellant should insert the day, month, and year the judgment, order, or decree was entered in the blanks provided (for example, the "14th day of December, 1998").

9. The appellant must list all parties to the appeal, including the appellant, with the names of their respective attorneys in the space provided.

10. The date the notice of appeal is signed should be inserted in the space provided.

11. The appellant's attorney must sign the notice of appeal in the space provided. If the appellant is not represented by an attorney, the appellant must sign and should identify the signature as that of the appellant.

12. The name and address of the person who signs of the notice of appeal, either the appellant's attorney or the appellant, as appropriate, should be inserted in the space provided. The person's telephone number must be included in the space indicated.

13. If a bankruptcy appellate panel (BAP) is authorized to hear appeals in the district and the appellant wants to elect to appeal to the district court instead, the appellant must file a separate, written statement of election with the notice of appeal.