

FILING AN APPEAL OF A BANKRUPTCY COURT ORDER, JUDGMENT OR DECREE

Effective December 1, 2014, Part VIII of the Federal Rules of Bankruptcy Procedure governing bankruptcy appeals was substantially revised in order to align those rules with the Federal Rules of Appellate Procedure and updated to include electronic transmission, filing, and service.

The following instructions must be read together with the Federal Rules of Civil Procedure (FRCP), the Federal Rules of Bankruptcy Procedure (FRBP), the Local Rules of the Southern District of New York and this Court's Local Rules and Procedures.

NOTICE OF APPEAL

A party who wishes to appeal a bankruptcy court's final decision or an interlocutory order specified in 28 U.S.C. § 158(a)(3) must file a Notice of Appeal, substantially in conformance with Official Bankruptcy Form 417A (with a copy of the order, judgment or decree attached) with the bankruptcy court pursuant to FRBP 8002.

In addition to the requirements set forth in FRBP 8003(a)(3), the appellant shall

(1) include in the notice of appeal the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys,

(2) pay the docket fee when the notice of appeal is filed, and¹

(3) provide an original and three copies of the civil cover sheet, which can be obtained from the district court's website [<http://www.nysd.uscourts.gov/file/forms/civil-cover-sheet>].

If the appeal is related to another pending case in the district court, the appellant must provide the information required on the civil cover sheet and file a Statement of Relatedness, SDNY LR 13(b) which can be located in the Rules for the Division of Business Section. [<http://www.nysd.uscourts.gov/file/forms/related-case-statement>]

If the appeal or proceeding, or one essentially the same has been previously filed in the SDNY at any time, provide the following information required on the civil cover sheet: the judge previously assigned; whether the case was voluntary or involuntary and, if the case was dismissed, provide date & case number.

Mailing labels are no longer required.

¹ The filing fee for a Notice of Appeal can be found on the bankruptcy court's website under Court Info/Filing Fees.

Upon receipt of the Notice of Appeal, civil cover sheets and docket fee, the appeal will be docketed in the district court under the title of the bankruptcy case and the title of any adversary proceeding.

A Notice of Appeal filed after the decision or order is announced but before it is entered is treated as filed on the day of entry. A Notice of Appeal filed after entry of judgment but before the last of the motions listed in FRBP 8002(b)(2)² is decided is treated as filed when the order determining the last of the motions is entered.

STAY PENDING APPEAL

Ordinarily, a party must first move in the bankruptcy court for a stay pending appeal or other intermediate requests for relief specified in FRBP 8007(a), either before or after a notice of appeal is filed. However, a motion for a stay pending appeal cannot be filed in the district court unless a Notice of Appeal has already been filed. If such a stay is to be sought from the district court after a notice of appeal has been filed but before the appeal appears on the district court docket, the movant must obtain from the clerk of the bankruptcy court, the district court civil case number and name of the district judge assigned to the appeal, and thereafter file with the clerk of the district court the motion for relief.³ Motions for a stay pending appeal or other relief specified in FRBP 8007(a) will no longer be assigned separate miscellaneous case numbers. The movant must give reasonable notice of the motion to all parties affected by the order from which the appeal is being taken.

PERMISSION TO APPEAL

A party seeking to appeal from an interlocutory order or decree of the bankruptcy court under 28 USC §158(a)(3) must file a district court cover sheet with the Notice of Appeal as instructed above and a motion for leave to appeal as specified in FRBP 8004(a) and (b).

A party responding to a motion for leave to appeal must file a response in opposition or a cross-motion in the district court within 14 days, pursuant to FRBP 8004.

² 8002(b) EFFECT OF A MOTION ON THE TIME TO APPEAL.

(1) In General. If a party timely files any of the following motions, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(A) to amend or make additional findings under Rule 7052, whether or not granting the motion would alter the judgment;

(B) to alter or amend the judgment under Rule 9023;

(C) for a new trial under Rule 9023; or

(D) for relief under Rule 9024 if the motion is filed within 14 days after the judgment is entered.

³ To obtain the district court civil case number, contact the divisional office of the bankruptcy court in which the case is pending, as follows:

Manhattan: Contact Mr. Anatin Rouzeau [212-284-4078].

White Plains: Contact Ms. Mimi Correa [914-390-4070].

Poughkeepsie: Contact Ms. Gwen Colon [845-452-4200, ext. 6365].

An authorization of direct appeal by the Second Circuit Court of Appeals acts as a grant of leave to appeal if the district court has not already granted leave. FRBP 8004(e).

DIRECT APPEALS

A certification of a judgment, order or decree of a bankruptcy court for direct review in the Court of Appeals under 28 USC § 158(d)(2)(A) must be filed with the clerk of court where the matter is pending. For purposes of FRBP 8006(b) only, a matter remains “pending” in the bankruptcy court for 30 days after the effective date of the appeal in order to provide the bankruptcy judge with an opportunity to decide the issue of certification.

RECORD ON APPEAL FRBP 8009

Designation of the Record. The appellants must file with the bankruptcy court and serve on the appellee a designation of items to be included in the record on appeal and a statement of the issues to be presented within 14 days after the notice of appeal becomes effective pursuant to FRBP 8002.

Within 14 days after being served, the appellee may file with the bankruptcy court and serve on the appellant a designation of additional items to be included in the record and a statement of issues to be presented on the cross-appeal.

No paper copies of designated items are required, except as provided in the district judge’s Individual Practices Rules or an order entered by the court. FRBP 8009;
<http://www.nysd.uscourts.gov/judges/District>

Transcripts. The duties of the parties to provide a transcript are set forth in FRBP 8009(b). If a transcript has been docketed in the case, a party may simply add the document number to the designation, whether or not the transcript is restricted from public view. To request a transcript of a court recorded hearing, follow the instructions on the bankruptcy court’s website at <http://www.nysb.uscourts.gov/obtaining-transcripts>.

Transcript designations filed by counsel must be electronically filed.

Sealed Documents. A document placed under seal by the bankruptcy court may be designated as part of the record on appeal. In doing so, a party must identify it without revealing confidential or secret information. Pursuant to FRBP 8009(f), the bankruptcy court may not transmit it to the district court without permission. Instead, a party must file a motion with the district court to accept the document under seal. If the motion is granted, the movant must notify the bankruptcy court of the ruling, and the bankruptcy court will promptly transmit the sealed document to the district court.

Correcting/modifying record. If any difference arises about whether the record truly discloses what occurred in the bankruptcy court, the difference must be submitted to and settled by that court and the record conformed accordingly pursuant to FRBP 8009(e).

DOCKET FEE

The filing fee for a Notice of Appeal can be found on the bankruptcy court's website at <http://www.nysb.uscourts.gov/filing-fees>. The fee may be paid on-line with a credit card when filing the Notice of Appeal or by cashier's check, certified bank check, business or corporate check, or money order drawn on a major American bank or the United States Postal Service, and made payable to *Clerk, U.S. Bankruptcy Court*. Major credit cards (MasterCard/Visa, Discover, American Express) are also accepted.

If the appeal is dismissed or denied, the docket fee will not be refunded to the appellant.

An appellant who cannot afford to pay the fee must apply to the district court⁴ for “*in forma pauperis*” (“IFP”) status.

⁴ Application to Proceed without Prepaying Fees or Costs (IFP Application) may be found under Forms on the district court's website [www.nysd.uscourts.gov].