

BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT

Local Rules



April 3, 2002

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JUDGES OF THE PANEL

Hon. Arthur N. Votolato, Chief Judge

Hon. Carol J. Kenner, Bankruptcy Judge
Hon. Enrique S. Lamoutte, Bankruptcy Judge
Hon. Sara E. de Jesus, Bankruptcy Judge
Hon. James B. Haines, Bankruptcy Judge
Hon. William C. Hillman, Bankruptcy Judge
Hon. Joan N. Feeney, Bankruptcy Judge
Hon. Mark W. Vaughn, Bankruptcy Judge
Hon. Henry J. Boroff, Bankruptcy Judge
Hon. Gerardo A. Carlo, Bankruptcy Judge
Hon. J. Michael Deasy, Bankruptcy Judge
Hon. Joel B. Rosenthal, Bankruptcy Judge
Hon. Louis H. Kornreich, Bankruptcy Judge

Hon. Colleen A. Brown, Bankruptcy Judge of the Second Circuit, Visiting Judge

OFFICERS OF THE PANEL

Phoebe Morse, Clerk
Lori Digiammarino, Staff Attorney
Gwen May, Judicial Law Clerk
Pamela Rendel, Case Manager

AMENDMENTS

April, 2002

This edition of the rules supercedes the November, 1997 publication. Since then, several rules have been amended, adopted, or proposed. Proposed rules are not included here; they are available in the Clerk's Office.

LOCAL RULE 8006-1, Record and Issues on Appeal: *adopted*. The rule was added to require a party to file with the Bankruptcy Appellate Panel additional copies of its designation of the record and each item designated.

RULE 8010-1(a), Form of Briefs and Related Papers: *amended*. The rule was amended to add subsection (a)(1), requiring that official, certified or stipulated translations be filed whenever a party submits or cites to documents not in the English language.

RULE 8011-1, Motion Practice: *amended*. This rule was amended to add subsection (e) explicitly providing for summary disposition.

RULE 8012-1, Oral Argument: *adopted*. This rule was added to set forth the Panel's policies and procedures on oral argument.

RULE 8018-1, Opinions: *adopted*. This rule as added set forth the Panel's policies on opinions, including dispositions that are not to be used for citation.

**UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE FIRST CIRCUIT**

LOCAL RULES

Introduction.

Purpose of the Local Rules for the Bankruptcy Appellate Panel for the First Circuit. The following Local Rules for the First Circuit Bankruptcy Appellate Panel (BAP) govern practice before the BAP.

Scope and Function. The Local Rules for the First Circuit BAP supplement Part VIII of the Federal Rules of Bankruptcy Procedure.

Form of Citation. The First Circuit BAP Rules shall be cited as:

“1st Cir. BAP R. ____”

RULE 8001-1

Notice of Appeal

(a) Notice of Appeal: Filing and Fees.

(1) Where to File; Fee. Notices of appeal shall be filed, with the filing fee, in the appropriate bankruptcy court. The filing fee is \$105.00, or such other amount as may be prescribed by statute.

(2) Mistaken Filing. If a notice of appeal is mistakenly filed with the BAP, the Clerk shall follow the procedures set forth in Rule 8002(a) of the Federal Rules of Bankruptcy Procedure.

(b) Notice of Appeal: Form.

(1) **Format.** The notice of appeal must conform in substance to Official Form 17. The notice of appeal shall be accompanied by a filed, stamped copy of the bankruptcy court order or judgment from which the appeal is taken.

(2) **Designation of Parties.** The notice of appeal shall set forth the names of all parties to the judgment, order or decree appealed from as well as the names, addresses and telephone numbers of their respective attorneys. [The term 'et. al.' may not be used in the caption of the notice of appeal.]

(3) **Signature.** Every notice of appeal shall be signed by counsel for the appellant or, if unrepresented, by the appellant personally.

(c) Voluntary Dismissal of Appeal.

(1) **Before Docketing.** If an appeal has not yet been docketed in the BAP, it may be dismissed in the bankruptcy court upon the filing of a stipulation signed by all parties or on a proper motion and notice by all appellants.

(2) **After Docketing.** If an appeal has been docketed in the BAP, it may be dismissed by the parties in the manner set forth in Rule 8001(c)(2) of the Federal Rules of Bankruptcy Procedure. An appeal may also be dismissed on motion of all appellants, if no response or opposition is filed within ten (10) days after service of the motion, on terms and conditions determined by the BAP.

(d) Forum for Appeal: BAP and Opt-Out to District Court.

(1) **Appeals to the First Circuit Bankruptcy Appellate Panel.** All appeals from

bankruptcy courts are to the BAP, unless an election is made under sub-section (2) of this Rule.

(2) Election to Have Appeal Heard by District Court.

(i) Election by Appellant. An appellant electing to have an appeal heard by the district court pursuant to 28 U.S.C. § 158(c)(1) must file, with the notice of appeal, a separate written statement of election to have the appeal heard by the district court. The separate written statement shall include the case caption and be clearly entitled "Election to Proceed to District Court," and be accompanied by sufficient copies of the statement to enable the bankruptcy court clerk to effect the notice required under subpart (d)(3) of this Rule. Failure to so elect at the time of filing the notice of appeal waives the right of election under 28 U.S.C. 158 (c)(1) and Rule 8001(e) of the Federal Rules of Bankruptcy Procedure.

(ii) Election by Appellee. An appellee electing to have an appeal heard by the district court must file, within thirty (30) days from service of the notice of appeal, a separate written statement of election to have the appeal heard by the district court. The separate written statement shall include the case caption and shall be clearly entitled "Election to Proceed to District Court," and be accompanied by sufficient copies of the separate statement to enable the BAP Clerk to effect the notice required under subpart (d)(3) of this Rule. Except as otherwise ordered by the BAP, the filing of any paper [other than a notice of appearance] with the BAP or with the bankruptcy court by an appellee or any other party in interest prior to making an Election to Proceed to District Court shall be deemed a waiver of any time remaining in the thirty (30) day election period.

(iii) Consent. Failure to file a timely written election to have an appeal

heard by the district court shall be deemed consent that the appeal be heard by the BAP.

(3) Procedure Upon Opt-Out.

(i) If an appellant timely elects to have its appeal heard by the district court, the clerk of the bankruptcy court shall so notify the parties, the United States trustee and the BAP Clerk, by serving each with a copy of the separate written statement of election at the time service of the notice of the appeal is effected pursuant to Fed. R. Bankr. P. 8004. If an appellee so elects, the BAP Clerk shall notify the parties, the United States trustee, and the clerk of the bankruptcy court, by serving each with a copy of the separate statement of election immediately upon its filing.

(ii) Upon an effective election by an appellant, the bankruptcy court clerk shall direct the appeal to the district court in accordance with any established rules in the district. Upon an effective election by an appellee, the BAP Clerk shall transfer to the bankruptcy court all pleadings filed with the BAP and a certified copy of the BAP docket sheet.

(4) Challenges to Election. Challenges to the effectiveness of an election to proceed before the district court shall, in the case of an appellant's election, be referred to the district court for determination. In the case of an election by an appellee, such challenges shall be referred to the appropriate BAP judge(s).

RULE 8003-1

Motion for Leave to File Interlocutory Appeal

(a) Motion Required. Grant of leave to appeal from an interlocutory judgment, order or decree is discretionary with the BAP. Parties seeking leave to bring an interlocutory appeal must file in the bankruptcy court clerk's office a motion, containing the matters set forth in Fed. R. Bankr. P. 8003(a), together with a notice of appeal. The moving party shall serve its motion upon all other parties named in the notice of appeal accompanying its motion and upon the United States trustee. A party seeking leave to appeal to the district court must make an affirmative election to have the motion and the interlocutory appeal heard by the district court in the same manner required by 1st Cir. BAP R. 8001-1(d).

(b) Response. Unless otherwise ordered, any party opposing a motion for leave to bring an interlocutory appeal before the district court must file its response with the bankruptcy court clerk within 10 days. A party opposing a motion for leave to bring an interlocutory appeal must elect to have the appeal heard by the district court in the same manner as an appellee, and file a separate written statement of such selection within thirty (30) days of service of the motion for leave to appeal. Except as otherwise ordered by the BAP the filing of any paper prior to making the election, including a response to the motion for leave to bring an interlocutory appeal, terminates the time remaining in the thirty (30) day period to elect to have the appeal heard in the district court.

(c) Decision on Motion. Unless there is an election to have the interlocutory appeal heard by the district court, the bankruptcy court clerk shall forward the motion and any responses to the BAP for decision. The BAP may render its decision on the motion, with or without a hearing. Upon the entry of the BAP decision or order, the BAP Clerk shall serve the same on the parties and the bankruptcy court clerk.

RULE 8005-1

Stay Pending Appeal to Bankruptcy Appellate Panel

All parties shall strictly comply with Fed. R. Bankr. P. 8005 upon the filing of a motion for a stay pending appeal of an order, judgment or decree of a bankruptcy judge.

RULE 8006-1

Record and Issues on Appeal

(a) Copy of Designation of Record. Within ten days of filing its designation of record with the bankruptcy court, a party shall provide the Bankruptcy Appellate Panel with three copies of its designation and each item designated.

RULE 8007-1

Docketing of Appeal

Upon receipt of the designated record on appeal, the BAP Clerk shall docket and file the designation and the record with the notice of appeal and immediately issue a notice thereof to all parties appearing on the notice of appeal. Unless otherwise ordered by the BAP, appellant briefs shall be due 15 days from the date of the notice of the filing of the designated record. Appellee briefs shall be due 15 days from service of opening appellant briefs. See Fed. R. Bankr. P. 8009(a).

RULE 8008-1

Filing and Service of Other Papers

(a) Filing Upon Receipt. All other papers shall be considered timely if received in the office of the BAP Clerk on or before the due date. All papers shall be received, filed and docketed by the BAP Clerk, whether or not timely filed.

(b) Copies. Unless otherwise ordered by the BAP, all papers required or permitted to

be filed shall include an original and three copies.

(c) Service. Copies of all papers filed with the BAP, with the exception of the designated record, must be served by the filing party on all other parties to the appeal in the same manner and form as filed. A signed certificate of service shall be attached to the papers. Although the BAP Clerk shall accept for filing papers lacking a certificate of service, failure to effect service properly or to file such certificate shall be grounds for such sanctions as the BAP may deem appropriate.

(d) Facsimile Filing. The BAP Clerk is authorized to accept, for filing, papers transmitted by facsimile equipment in situations determined by the Clerk [or designee] to be of an emergency nature or in other compelling circumstances, subject to such procedures for follow-up filing of hard copies, or otherwise, as the Clerk may from time to time prescribe.

RULE 8009-1

Time for Filing Briefs and Related Papers

(a) Filing of Briefs. Unless otherwise ordered by the BAP, the briefing schedule shall be governed by Fed. R. Bankr. P. 8009(a). All parties shall file briefs in accordance with the governing rule, or affirmatively move for modification of the briefing schedule. Briefs and appendices are considered filed on the date mailed. Fed. R. Bankr. P. 8008(a).

(b) Appendix. Appellant briefs shall be accompanied by relevant appendices containing the matter set forth in Fed. R. Bankr. P. 8009(b). An appellee may serve and file a supplemental appendix as provided in Fed. R. Bankr. P. 8009(b).

(c) Transcript. Appellant shall include in its appendix a transcript or portion thereof of the order or judgment from which the appeal is taken, and/or the findings of fact and conclusions of law orally delivered by the Bankruptcy Court. The parties shall include in their respective appendices all portions of the transcript required for adequate review of the issues before the BAP.

RULE 8010-1

Form of Briefs and Related Papers

(a) Length and Content. Opening briefs may not exceed 30 pages and reply briefs may not exceed 20 pages. A party may include copies of relevant statutes, rules and regulations either in an addendum to its brief or in pamphlet form, which shall not be included in the page limit.

(1) Translations Required. The Bankruptcy Appellate Panel will reject documents not in the English language unless translations are furnished. Whenever a party cites to a statute, rule or regulation, or an opinion of the Supreme Court of Puerto Rico or other court of Puerto Rico in an appendix, brief or at oral argument and the cited authority is not available in the bound English language volumes, an official, certified or stipulated translation thereof, with three conformed copies, shall be filed. Partial translations are acceptable if stipulated to by the parties or submitted by a party not less than 30 days before oral argument. Where partial translations are submitted by a party, opposing parties may submit, prior to oral argument, translations of such additional parts as they deem necessary for a proper understanding of the substance of any such statute, rule, regulation or holding.

(b) Paper and Margins. Briefs shall be printed on 8½" by 11" paper with a one-inch margin on all four sides of text, to include pagination and footnotes.

(c) Spacing, Type and Font Minimal. Briefs shall use the following line format: single spacing for the caption and footnotes, and double-spacing for the main text. All printed matter must appear in at least 11 point type.

(d) Colors of Covers. All briefs shall have a color cover depending on the respective party. Appellant's brief shall have a blue cover; appellee's brief shall have a red cover; and appellant's reply brief shall have a gray cover. The cover of the appendix shall be white.

RULE 8011-1
Motion Practice

(a) Written Motion Required; Responses. All motions to the BAP shall be in writing and filed with the BAP Clerk and accompanied by a signed certificate of service. Briefs, affidavits and other papers permitted to accompany a motion must be filed with the motion. Unless otherwise directed or ordered, responses or opposition to a motion must be filed within 10 days after service of the motion.

(b) Procedural Motions The BAP Clerk may act on the following motions, if unopposed, without submission to a BAP panel or judge:

- (1) Motions relating to the production or filing of the record, transcripts, appendices or briefs on appeal;
- (2) Motions for voluntary dismissal of appeals;
- (3) Motions to dismiss for want of prosecution;

(4) Motions for extension of time;

(5) Motions for leave to consolidate appeals; and

(6) Such other motions as the BAP may designate the BAP Clerk to act upon and that are subject to disposition by a single judge under Federal Rule of Bankruptcy Procedure 8011(e).

Dispositive orders by the BAP Clerk shall reflect their entry pursuant to this rule. An order entered by the BAP Clerk shall be subject to reconsideration by a single judge or a BAP panel if, within ten (10) days of service of notice of the entry of the order, a party adversely affected thereby moves for reconsideration.

(c) Expedited or Emergency Motions. A party requesting an expedited or emergency determination shall plainly title its motion as one for emergency or expedited relief; clearly setting forth a date or period within which it seeks such determination and requesting that the period for response be reduced to a specified date or period. The circumstances warranting emergency or expedited consideration shall be fully disclosed and explained by a verified statement of counsel accompanying the motion, or by the party if not represented by counsel.

(d) Motions During Election Period.

(1) Place for Filing. If an appellant has not elected to proceed before the district court at the time its notice of appeal is filed, all motions relating to the appeal shall be filed with the BAP Clerk unless and until the case has been transferred to the district court. The BAP may not dismiss or finally dispose of an appeal within thirty (30) days from the date of service of the notice of appeal, but otherwise may fully consider and dispose of all motions filed within the thirty day period or until an election to proceed before the district court is made.

(2) Substantive Motions. Substantive motions (e.g., motions for leave to appeal, to dismiss an appeal, to reduce bond, etc.) shall be forwarded by the BAP Clerk to the full panel for determination. Unless specifically directed by the panel, oral argument will not be held on motions.

(e) Summary Disposition. At any time, on such notice as the Bankruptcy Appellate Panel may direct, on motion of any appellant, any appellee, or sua sponte, the Panel may (i) dismiss the appeal if the Panel lacks jurisdiction, (ii) dismiss the appeal, grant any other request for relief, or affirm and enforce the judgment or order below if it shall clearly appear that no substantial question is presented or (lii) reverse in the case of obvious error . Motions for such relief should be promptly filed when the occasion appears, and must be accompanied by an original and three copies of a memorandum or brief.

RULE 8012-1

Oral Argument

(a) Party's Statement. Any party may include, either in the opening or answering brief, a statement limited to one-half page setting forth the reasons oral argument should, or need not, be heard. Any such statement shall be inserted immediately after the Table of Contents and Table of Authorities, and before the first page of the brief, and shall bear the caption "REASONS ORAL ARGUMENT SHOULD [NEED NOT] BE HEARD" as appropriate. This statement shall not be considered in determining the maximum number of pages in the brief.

(b) Notice of Argument. If the Bankruptcy Appellate Panel concludes that oral argument is unnecessary based on the standards set forth in Fed. Bankr. R. P. 8012 counsel shall be so advised. The Panel's decision to dispense with oral argument may be announced by the Panel at the time the decision on the merits is rendered.

(c) Argument.

(1) Presentation. At oral argument the parties may expect the Panel to have some familiarity with the briefs and the record on appeal. The Panel will permit no more than 15 minutes per side for oral argument unless a different time is announced by the Panel at the commencement of argument. Counsel shall adhere to the prescribed time limit by their own devices. Where more than one counsel argues on one side of a case, it is their responsibility to assure a fair division of the total time allotted. One or more cases posing the same issues arising from the same factual context may be treated as a single case for the purposes of this rule.

(2) Consequence of Failure to File Brief. A party who fails to file a brief is not entitled to be heard at oral argument, unless the Panel determines otherwise.

RULE 8018-1

Opinions

(a) Opinions Generally. The Bankruptcy Appellate Panel normally issues a formal opinion which is published and may be cited in future cases. Where an opinion is issued “not for publication” it may be cited only in related cases.

(b) Statement of Policy. Normally, opinions are published in the official printed West reporter so as to be available for citation. This policy may be overcome in situations where an opinion does not articulate a new rule of law, modify an established rule, apply an established rule to novel facts or develop issues sufficiently to serve as a significant guide for future litigants or the Panel.

(c) Opinions and Dispositions Not to be Used for Citation. Unpublished opinions and dispositions may not be used for citation except to establish res judicata, estoppel, or the law of the case. Otherwise only published opinions may be cited.

(1) If counsel believes that an unpublished disposition has precedential value in relation to a material issue in a case and that no published opinion would serve as well, such disposition may be cited provided a copy is served on all other parties in the case, as well as on the Panel.

RULE 8070-1

Dismissal of Appeal for Failure to Prosecute

If no party has elected to proceed before the district court and no appellant prosecutes the appeal in accordance with the requirements of the Federal Rules of Bankruptcy Procedure and these rules, the BAP Clerk may enter an order dismissing the appeal for failure to prosecute. The BAP may reinstate the appeal upon motion by a defaulting party, within ten (10) days of service of the order. Such a motion shall not be allowed absent a verified statement by counsel for the defaulting party or by the defaulting party, if pro se, showing special circumstances justifying the failure to comply with the requirements of the Federal Rules of Bankruptcy Procedure or these rules.