

Bankruptcy Appeal Training

Presented by:

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Federal Bankruptcy Rules 8001-8028

- **Comprehensive revision, effective December 1, 2014.**
- **Changes bring closer alignment with Federal Rules of Appellate Procedure.**
- **Rules incorporate a presumption favoring electronic transmission, filing and service of court documents.**
- **Existing rules were reorganized and renumbered, some rules combined, others moved to new locations.**

Rules 8001 and 8011

Method of Transmitting Documents and Manner of Service:

- **8001(c):** A document must be sent electronically, unless a party is pro se, then it should be sent by mail.
 - Transmission via ECF will suffice.
- **8011(c):** Service must be made electronically, unless a party is pro se.
 - Service by electronic means is complete on transmission, unless notified that the transmission was unsuccessful.

Rule 8002: Time for Filing Notice of Appeal

- Mostly stylistic changes and some language changes; **the time to file remains 14 days.**
- ***New:*** An appeal by an inmate is timely filed if it is deposited in the institution's internal mail on or before the last day for filing. Appeal must include an affidavit to that effect.

Rule 8003: Appeal as of Right – How Taken; Docketing the Appeal

- The appeal must conform substantially to *new* Official Form 17A.
- Form 17A includes an *optional* Statement of Election to have the appeal heard by the district court.
 - No separate document required.
- Unless the Appellant completes Part 4 optional election, the appeal will be transmitted to the BAP.

Rule 8003 *con't*

- ***New ECF Event:*** Notice of Appeal and Statement of Election.
- ***Change from Previous Practice:*** The bankruptcy clerk will transmit the NOA promptly to the BAP or district court, and the appellate court will docket the appeal. Jurisdiction passes immediately.

Rule 8004: Appeal by Leave – How Taken; Docketing the Appeal

- Rule 8004 specifies the contents required to be included in any motion for leave to appeal.
- The bankruptcy clerk must promptly transmit the notice of appeal and motion for leave to the BAP or District Court, as applicable.
- **A response to a motion for leave to appeal must be filed directly with the BAP/District Court within 14 days of motion service.**

Rule 8005: Election to Have an Appeal Heard by the District Court instead of the BAP

- *Two New Forms:*

- 17A (Notice of Appeal and Statement of Election (filed by Appellant) – **filed with the B.Ct.**
- 17B (Opt. Appellee Statement of Election to Proceed in District Court) – **filed with the BAP**

- Appellant's Statement of Election is now included within the Notice of Appeal; no separate document requirement

- Bankruptcy clerk transmits NOA to District Court if election is checked in Form 17A.

Rule 8005 *con't*

- If Appellee files **Form 17B (Statement of Election)** with the BAP, the BAP will transmit the appeal to the district court and notify the bankruptcy court.
- A motion seeking the determination of the validity of an election must be filed no later than 14 days after the Statement of Election and is decided by the BAP.

Rule 8006: Certifying a Direct Appeal to the Court of Appeals

- A request for a certification must be **filed within 60 days** after the entry of the judgment, order, or decree.
- The request must be filed with the clerk of the court where the matter is pending.
 - The matter remains pending in the bankruptcy court for **30 days** after first NOA filing date.
 - A matter is pending in the BAP or district court thereafter.

Rule 8006 *con't*

- The bankruptcy court has **30 days** to rule on a petition for certification for direct appeal, or certify on own motion, after which jurisdiction shifts to BAP/District Court.
- **LBR 1005-1(d)(2)(N)** was amended to omit any response deadline on a motion to certify a direct appeal – the deadline is left to the discretion of the court depending on when the motion is filed.

Rule 8008 – Indicative Rulings

- ***This rule is new.*** Because the NOA is immediately transmitted to the appellate court and jurisdiction passes,
- **This rule was created to address motions filed in the bankruptcy court related to such an appeal (e.g. settlement agreement, motion to compromise, etc.).**

Rule 8008 *con't*

- **Relief Pending Appeal:** If a party files a timely motion in the bankruptcy court that the court lacks authority to grant because of an appeal, *the court may*:
 - Defer consideration;
 - Deny the motion; or
 - State that the court would grant the motion if the issue was remanded for that purpose, or state that the motion raises a substantial issue.
- *The movant must notify the appellate court* if the bankruptcy court states it would grant the motion or that it raises a substantial issue.

Rule 8009 – Record of Appeal; Sealed Documents

- **Transcript of Proceedings:** The Appellant must order the transcript within 14 days of filing the appeal and must file with the court a copy of the transcript order or certify that no transcript is being filed.

Rule 8009 *con't*

- ***New Attorney Filing events*** related to the transcript process:
 - Transcript Ordered (must attach copy of order form)
 - Certification of No Transcript Ordered (text only)
- ***New Transcriptionist Filing events:***
 - Acknowledgement of Transcript Request
 - Request to extend time to file transcript
- Subsection (f) prescribes the treatment of sealed documents designated as part of the record on appeal.

Rule 8010 – Completing and Transmitting the Record

8010(c) - Record for a Preliminary Motion

- **If, before the record is transmitted a party moves for:**
 - **leave to appeal**
 - **dismissal**
 - **a stay pending appeal**
 - **approval of a supersedeas bond**
- **The bankruptcy clerk must transmit any parts of the record designated by the party to the applicable appellate court.**

Rule 8010 con't

- **New Local Rule 8010-1** requires the movant to “promptly” notify the bankruptcy court upon the filing of any such motion and to designate any parts of the record to be transmitted in support of the motion.
- **New ECF event:** Request to Transmit Documents pursuant to FRBP 8010(c) re: Type of Matter and Doc.#

Appeal Deficiency Process

Upon the expiration of any appeal related deadlines, including:

- **The Transcript Ordered or Certification of No Transcript Ordered Event (Due within 14 days of NOA)**
- **The Designation of Items to be included in the Record (Due within 14 days of NOA)**
- **The Statement of the Issues to be Presented (Due within 14 days of NOA)**

Appeal Deficiency Process con't

If the proper document or event has not been **timely filed**, the Clerk's office shall take the following action:

- Enter a ***Notice of Default of Appeal Deadline (Text Only)*** on the case docket, with electronic notice given to the parties and to the applicable appellate court for further action.

3 New Appeal Forms

- **B17A – Notice of Appeal and Statement of Election**
 - Amended to add an optional Statement of Election to have the appeal heard by the district court rather than the BAP.
- **B17B - Optional Appellee Statement of Election to Proceed in District Court (this is an optional form to be filed with BAP)**
 - The official form for an appellee to state its election to have an appeal heard by the district court rather than by the BAP.
 - The form is to be **filed with the BAP within 30 days of service of the Notice of Appeal**, *and* before Appellee files any other document, other than an entry of appearance, related to the pending appeal.

New Appeal Form B17C

- **B17C - Certificate of Compliance with Rule 8015(1)(7)(B) or 8016(d)(2) -- this is an optional form to be filed with the applicable appellate court**
 - **Amended FRBP 8015(a)(7)(c) and 8016(d)(3) require an attorney to certify that the brief complies with the applicable type-volume limitation. The filing of this form satisfies the certification requirement.**
 - **This form is not needed if the brief meets the applicable page limitation under the rule.**

Additional Appeal Resources

Available on the Court's Website under

For Attorneys >Bankruptcy Resources &

Manuals:

- **Attorney Handbook – Appeals topics**
- **Electronic Filer User Manual- Appeals**
- **Training materials on appellate rule changes**
- **Flowchart of revised transcript process**
- **Copies of these slides**