

LOCAL RULES - CENTRAL DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**CHAPTER IV
LOCAL RULES GOVERNING
BANKRUPTCY APPEALS, CASES AND PROCEEDINGS ***

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CHAPTER IV

**LOCAL RULES GOVERNING
BANKRUPTCY APPEALS, CASES AND PROCEEDINGS**

RULE 1 (8001-1). SCOPE OF RULES

1.1 (8001-1.1) SCOPE OF RULES. These rules govern procedure in appeals, withdrawals of reference and other matters referred from the United States Bankruptcy Court to the United States District Court, Central District Of California. When these rules provide for the making of a motion or application in the bankruptcy court, the procedure for making such motion or application shall be in accordance with the practice of the bankruptcy court.

1.2 (8018-1.2) RULES NOT TO AFFECT JURISDICTION. These rules shall not be construed to extend or limit the jurisdiction of the district court as established by law.

RULE 2 (8001-2). NOTICE OF APPEAL; HOW AND WHERE TAKEN

2.1.1 (8001-2.1.1) FOR CASES FILED IN THE BANKRUPTCY COURT ON OR BEFORE 10/22/94. All appeals shall be referred immediately to the Bankruptcy Appellate Panel unless a party to the appeal files a written objection with the clerk of the Bankruptcy Appellate Panel within 21 days from the date of the filing of the notice of appeal. If such an objection is timely filed, the appeal shall be immediately transferred by the Bankruptcy Appellate Panel to the district court.

2.1.2 (8001-2.1.2) FOR CASES FILED IN THE BANKRUPTCY COURT AFTER 10/22/94.

2.1.2.1 (8001-2.1.2.1) STATEMENT OF ELECTION BY APPELLANT. All appeals shall be referred immediately to the Bankruptcy Appellate

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Panel unless the Appellant files a separate statement of election to transfer appeal to the District Court with the notice of appeal, in which case the notice of appeal shall be referred immediately to the district court.

2.1.2.2 (8001-2.1.2.2) **STATEMENT OF ELECTION BY OTHER PARTY.** If any other party wishes to have the appeal heard by the district court, that party must, within 30 days after service of the notice of appeal, file with the clerk of the Bankruptcy Appellate Panel a written statement of election to transfer the appeal to the district court. If such a written statement of election is timely filed, the notice of appeal shall be referred immediately to the district court.

2.2 (8001-2.2) **FILING THE NOTICE OF APPEAL.** An appeal permitted by law as of right from the bankruptcy court to the district court must be taken by filing a notice of appeal with the clerk of the bankruptcy court within the time allowed by Rule 8002 of the Federal Rules Of Bankruptcy Procedure (F.R.B.P.). At the time of filing, the appellant must furnish the bankruptcy clerk with sufficient copies of the notice of appeal to enable the bankruptcy clerk to comply promptly with the service requirement of F.R.B.P. 8004. Appeals by permission under 28 U.S.C. § 158 (a) shall be taken in the manner prescribed by Rule 3. Certification as to interested parties and notice of related cases, as prescribed in Local Civil Rule 83-1.5, shall be filed by the appellant with the notice of appeal.

2.3 (8018-2.3) **JOINT OR CONSOLIDATED APPEALS.** If two or more persons are entitled to appeal from a judgment or order of the bankruptcy court and their interests are such as to make joint appeal practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the district court upon its own motion, upon motion of a party, or by stipulation of the parties to the multiple appeals.

2.4 (8003-2.4) **CONTENT OF THE NOTICE OF APPEAL.** A notice of appeal must designate the judgment, order, or part thereof from which the appeal is taken. A notice of appeal must also specify the party or parties taking the appeal by naming each appellant in either the caption or the body of the notice of appeal. An attorney representing more than one party may fulfill this requirement by describing those parties with such terms as “all plaintiffs,” “the defendants,” “the plaintiffs A,B,

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et al.,” or “all defendants except X.” A notice of appeal filed by a party not represented by counsel may be filed only on behalf of the party signing the notice.

2.5 (8004-2.5) **SERVING THE NOTICE OF APPEAL.** Within three days after the filing of a notice of appeal, the clerk of the bankruptcy court shall serve upon all parties to the appeal a copy of the notice of appeal. The clerk of the bankruptcy court shall forthwith send a copy of the notice, a copy of the order or judgment from which the appeal is taken and a copy of the docket to the clerk of the district court. The bankruptcy clerk shall note in the file or on the docket the names of the parties to whom copies were mailed, with the date of mailing.

2.6 (8001-2.6) **PAYMENT OF FEES.** Upon the filing of any separate or joint notice of appeal from the bankruptcy court, the appellant shall pay to the clerk of the bankruptcy court such fees as are established by statute in addition to the docket fee prescribed by the Judicial Conference of the United States.

RULE 3 (8001-3). LEAVE TO APPEAL FROM INTERLOCUTORY ORDERS AND DECREES

3.1 (8003-3.1) **MOTION FOR LEAVE TO APPEAL.** Leave to appeal under 28 U.S.C. § 158 (a) shall be sought by filing with the clerk of the bankruptcy court a motion for leave to appeal accompanied by a notice of appeal. The motion for leave and notice of appeal must be filed within the time provided in F.R.B.P. 8002 and must include proof of service.

3.2 (8003-3.2) **CONTENT OF MOTION; OPPOSITION.** A motion for leave shall include all elements required by F.R.B.P. 8003 (a). Within ten days after service of a motion for leave, a responding party shall file with the clerk of the bankruptcy court an opposition to the motion or a notice of non-opposition.

3.3 (8018-3.3) **LEAVE TO APPEAL GRANTED.** If leave to appeal is granted, the clerk of the bankruptcy court shall notify counsel for appellant within five court days. All time limits set by the rules applicable to bankruptcy appeals shall

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run from the date of the notice of entry by the bankruptcy clerk of the order granting leave to appeal.

3.4 (8003-3.4) APPEAL IMPROPERLY TAKEN REGARDED AS A MOTION FOR LEAVE TO APPEAL. If a required motion for leave to appeal is not filed but a timely notice of appeal is filed, the notice of appeal shall be deemed a timely motion for leave to appeal. The district court may grant or deny leave to appeal or may direct the appellant to file a proper motion for leave to appeal.

RULE 4 (8006-4). THE RECORD ON APPEAL AND EXCERPTS OF RECORDS

4.1 (8006-4.1) COMPOSITION OF RECORD ON APPEAL. The original documents and exhibits filed in the bankruptcy court, the transcript of proceedings, if any, and a certified copy of the docket prepared by the clerk of the bankruptcy court shall constitute the record on appeal.

4.2 (8006-4.2) CERTIFICATE OF READINESS. Upon the filing of the transcripts in the bankruptcy court, or alternatively, when the bankruptcy court receives notice that no transcripts will be ordered, the clerk of the bankruptcy court shall transmit a Certificate of Readiness to the district court. The certificate shall attest that all documents which comprise the record are available to parties in the bankruptcy court clerk's office. The district court shall forthwith notify the parties of the date of filing the Certificate of Readiness and this date shall constitute the date of entry on the docket for purposes of F.R.B.P. 8007 and 8009.

4.3 (8018-4.3) RETENTION OF THE TRANSCRIPT AND CLERK'S RECORD. The transcript and record on appeal shall be retained by the clerk of the bankruptcy court for use by the parties in preparing their briefs until requested by the district court.

4.4 (8009-4.4) EXCERPTS OF RECORD. Excerpts of record shall be filed in accordance with F.R.B.P. 8009 (b). A party filing excerpts of record shall file two

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(2) copies to be bound separately from the briefs. Each copy shall have a cover styled as described in Rule 32 (a) of the Federal Rules of Appellate Procedure.

Pursuant to F.R.B.P. Rule 8009 (b)(9), the excerpts of record shall include the transcripts necessary for adequate review in light of the standard of review to be applied to the issues before the district court. The court will only consider those portions of the transcript included in the excerpts of record.

4.5 (8007-4.5) TRANSMITTAL OF THE RECORD UPON REQUEST. The bankruptcy court shall transmit the record to the district court within ten (10) days of receiving a written request from the clerk of the district court.

RULE 5 (8009-5). BRIEFS

5.1 (8009-5.1) TIME FOR FILING, FORM AND NUMBER OF BRIEFS. Parties shall file an original and one copy of their briefs. Briefs shall be prepared and filed in accordance with F.R.B.P. 8009 and 8010, and Rule 32 (a) of the Federal Rules of Appellate Procedure.

5.2 (8010-5.2) LENGTH OF BRIEFS. Except with permission of the district court, the appellant's and appellee's opening briefs shall not exceed 30 pages, and reply briefs shall not exceed 20 pages, exclusive of pages containing the table of contents, tables of citations, proof of service and any addendum containing statutes, rules, regulations or similar material.

5.3 (8009-5.3) BRIEFS IN CASES INVOLVING CROSS-APPEALS. If a cross-appeal is filed, the appellee's and appellant's briefs shall be prepared and filed in accordance with F.R.B.P. 8009 with respect to the appellee's cross-appeal.

5.4 (8018-5.4) BRIEFS IN CASES INVOLVING MULTIPLE APPELLANTS OR APPELLEES. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, all parties are encouraged to join in a single brief to the greatest extent practicable.

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5.5 (8018-5.5) CONSEQUENCE OF FAILURE TO FILE BRIEFS. If an appellant fails to file a brief within the time provided by these rules, the district court may dismiss the appeal on its own motion or upon motion of the appellee. If an appellee fails to file a brief, the appellee will not be heard at oral argument except by permission of the district court.

5.6 (8009-5.6) EXTENSIONS OF TIME FOR FILING BRIEFS. An application or motion for an extension of time for filing a brief shall be filed in the district court within the time limits prescribed by F.R.B.P. 8009 and shall be accompanied by a proof of service of the application or motion reflecting service on the other interested parties. The application or motion shall be accompanied by a declaration stating the date the brief is due, how many previous extensions have been granted, when the brief was first due, and whether any previous requests for extension of time have been denied. The declaration must also state the reason(s) why such an extension is necessary, the amount of additional time requested, and the position of the opponent(s) as to the proposed extension or why the moving party has been unable to obtain a statement of the opponent's position.

RULE 6 (8011-6). MOTIONS

6.1 (8018-6.1) WITHDRAWAL OF REFERENCE FROM THE BANKRUPTCY COURT. A motion to withdraw the reference of a case or proceeding pending in the bankruptcy court shall be filed, with proof of service of the motion reflecting service on the other interested parties, with the clerk of the district court. Such a motion shall be made in accordance with F.R.B.P. 5011. Certification as to interested parties and notice of related cases, as prescribed in Local Civil Rule 83-1.5, shall be filed by the moving party with the motion to withdraw. A conformed copy of the motion to withdraw shall be delivered by the moving party to the bankruptcy judge presiding over the case or proceeding.

Opposition and reply papers to the motion to withdraw shall be filed in the district court in accordance with Local Civil Rule 7. Opposition papers shall include a certification as to interested parties as prescribed in Local Civil Rule 83-1.5.

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6.2 (8011-6.2) EXTENSION OF TIME. All motions to extend time, except for the filing of briefs, shall be filed in the bankruptcy court. Motions to extend the time for the filing of briefs shall be made in accordance with Rule 5.6.

6.3 (8011-6.3) EMERGENCY MOTIONS. If a movant certifies that to avoid immediate irreparable harm relief is needed on an emergency basis, the motion shall be governed by F.R.B.P. 8011 (d) and the following requirements:

6.3.1 (8011-6.3.1) Before the filing of the motion, the movant shall make every practicable effort to notify and serve, using the quickest method available, both the clerk of the district court and opposing counsel.

6.3.2 (8011-6.3.2) Any motion under this Rule shall have “Emergency Motion” precede the title of the motion.

6.3.3 (8018-6.3.3) A certificate of counsel for the movant, entitled “Emergency Motion,” shall follow the cover page and shall contain:

6.3.3.1 (8011-6.3.3.1) Facts showing the existence and nature of the claimed emergency;

6.3.3.2 (8011-6.3.3.2) The telephone numbers and office addresses of moving and opposing counsel;

6.3.3.3 (8011-6.3.3.3) When and how counsel for the other parties were notified and whether they have been served, or if not notified and served, why that was not done;

6.3.3.4 (8011-6.3.3.4) If the relief sought in the motion was available in the bankruptcy court, a statement as to whether all grounds presented in support of the motion brought before the district court were submitted to the bankruptcy court in accordance with F.R.B.P. 8011(d), and, if not, the reasons why.

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6.3.4 (8018-6.3.4) An appendix to the emergency motion shall be served and filed with the motion and shall include the following:

6.3.4.1 (8018-6.3.4.1) A conformed copy of the notice of appeal;

6.3.4.2 (8018-6.3.4.2) A conformed copy of the judgment, order, or decree from which the appeal is taken;

6.3.4.3 (8018-6.3.4.3) If the motion is for a stay pending appeal, a copy of the bankruptcy court's order denying the movant a stay pending appeal or an affidavit by the movant stating that a stay had been denied.

6.4 (8003-6.4) LEAVE TO APPEAL. Motions for leave to appeal shall be filed in accordance with Rule 3.

6.5 (8005-6.5) STAY PENDING APPEAL. Motions for stay pending appeal shall be filed in accordance with F.R.B.P. 8005.

6.6 (8018-6.6) WITHDRAWAL OF THE ELECTION TO THE DISTRICT COURT. Motions to withdraw the election for the bankruptcy appeal to be heard by the district court and to refer the matter to the Bankruptcy Appellate Panel shall be filed in the district court in accordance with Local Civil Rule 7.

RULE 7 (8012-7). ORAL ARGUMENT

The judge assigned to the bankruptcy appeal shall determine whether oral argument will be permitted.

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RULE 8 (8016-8). ENTRY OF JUDGMENT

Immediately upon entry of a judgment or order on the docket, the clerk of the district court shall send a notice of entry to each party to the appeal, the United States Trustee, the bankruptcy judge, and the bankruptcy court. The district clerk shall note in the docket the names of the parties to whom copies were mailed, with the date of mailing.

Original documents and exhibits transmitted as the record on appeal shall be returned to the clerk of the bankruptcy court upon disposition of the bankruptcy appeal by the district court.

Upon entry of a judgment or final order, jurisdiction is returned immediately to the bankruptcy court for further proceedings.

RULE 9 (8014-9). COSTS ON APPEAL

Costs for the bankruptcy appeal shall be taxed by the clerk of the district court in accordance with F.R.B.P. 8014 and Local Civil Rule 54.

RULE 10 (8001-10). VOLUNTARY DISMISSALS OF APPEALS

10.1 (8001-10.1) BEFORE THE CERTIFICATE OF READINESS IS FILED IN THE DISTRICT COURT. When an appeal is dismissed by the bankruptcy court in accordance with F.R.B.P. 8001(c)(1), the appellant shall promptly file a notice of the dismissal in the district court.

10.2 (8001-10.2) AFTER THE CERTIFICATE OF READINESS IS FILED IN THE DISTRICT COURT. When an appeal is dismissed by the district court in accordance with F.R.B.P. 8001(c)(2), the appellant shall promptly file a notice of the dismissal in the bankruptcy court.

RULE 11 (8018-11). PRO HAC VICE APPEARANCES

Attorneys who have been granted permission to appear pro hac vice by the bankruptcy court in accordance with Bankruptcy Court Local Rule 2090-1(2) may proceed pro hac vice in all bankruptcy cases and proceedings subsequently filed in or referred to the district court.

**END OF CHAPTER IV -
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