

FREQUENTLY ASKED QUESTIONS

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Getting Started

Where do I file my Notice of Appeal?

The Notice of Appeal is filed with the court that entered the order, judgment, or final decree from which you are appealing. If you are appealing a bankruptcy court order, you file the Notice of Appeal at the bankruptcy court. If you are appealing a judgment of the BAP, you will file the Notice of Appeal with the BAP.

What does it cost to file a Notice of Appeal at the bankruptcy court?

There is a \$5.00 fee imposed by 28 U.S.C. § 1930(c) and a \$293.00 docketing fee imposed by the Judicial Conference of the United States. Payment of the total \$298.00 appeal filing fee is submitted to the bankruptcy court. The BAP may dismiss the appeal if the appellant fails to pay the filing fee.

Will you help me fill out forms?

No. The Clerk's Office is prohibited from giving legal advice, which includes instruction on how to complete forms. If you are acting as your own attorney, you will be responsible for all actions on your behalf during the appeal process.

I don't have access to a computer or a typewriter. Can I file handwritten pleadings?

Yes, documents filed at the BAP may be handwritten, but ensure the papers you file are legible.

If I have never appeared before the BAP, am I able to practice at this Court?

An attorney representing a party in an appeal is admitted to practice before the BAP if the attorney is: 1) admitted to practice by and a member in good standing of the United States Court of Appeals for the First Circuit; 2) admitted to practice by and a member in good standing of a United States District Court within the First Circuit; or 3) admitted to practice by the United States Bankruptcy Court where the underlying case or proceeding on appeal is pending.

For more information on Appearance and Admission to Practice, [see](#) 1st Cir. BAP L.R. 9010-1.

What rules apply in a proceeding before the BAP?

The Federal Rules of Bankruptcy Procedure and the First Circuit BAP Local Rules apply in a proceeding before the BAP. These rules can be found on the BAP's website under the

Rules & Procedures heading. If you want a copy of the local rules sent to you, you will need to send a letter requesting a copy, accompanied by a self-addressed, stamped envelope. The envelope should at least be a 9” x 12” sized envelope. The copying fee will be \$9.00. The check is made payable to: **Clerk, U.S. Court of Appeals.**

General Case-Related Questions

What is a “Certificate of Service?”

When you file a document with the BAP, you must include a written statement indicating that you have sent the document to all interested parties and by what means the document was served—i.e., U.S. mail, commercial delivery service (e.g., UPS), facsimile, or sent electronically via the BAP’s electronic filing system. This statement is referred to as a certificate of service or a proof of service. You must list the name and address of each person and attorney being served with the document and the name of the party each attorney represents. You must sign and date the certificate.

A Certificate of Service usually appears on the last page of any document that you are required to serve on parties in interest in your case. It does not need to be a separate document.

See Fed. R. Bankr. P. 8011; 1st Cir. BAP L.R. 8011-1; BAP General Order 2, Rule 5

How do I obtain information about a case?

If you have a PACER account, you can access BAP case dockets electronically. Case summaries, docket information and viewable copies of pleadings may be retrieved via the Internet using your PACER account. There is a fee for access (\$.10 per page), however, the charge is limited to the first 30 pages of a document or report screen. You will be charged each time you open a new document.

Older BAP cases may be archived at the Federal Records Center in Waltham, Massachusetts. To determine if a case has been archived, contact the Clerk’s Office. Records may be obtained directly from the Federal Records Center, but you will need to obtain certain archiving information from the Clerk’s Office prior to requesting information from the Federal Records Center and there is a fee for retrieval of archived cases.

For more information regarding PACER, please visit its website: <https://.pacер.uscourts.gov>.

Can I speak to a judge or a law clerk about my case?

No. The Clerk’s Office is the point of contact between parties, their counsel, and the court. The BAP does not employ a pro se law clerk. You can contact the Clerk’s Office either by telephone, (617) 748-9650, or by email at: ca01_BAP@ca1.uscourts.gov.

I filed my Notice of Appeal at the bankruptcy court in San Juan. Will any of the other judges from the District of Puerto Rico be involved in my case?

No judges from the district where you filed your Notice of Appeal will be assigned to your case. For example, if your bankruptcy case is pending at the court in Boston, no Massachusetts bankruptcy judge will be involved in your appeal. The same is true for a bankruptcy case filed in Portland, Maine; the bankruptcy judge sitting in Bangor, Maine will not be assigned to hear your appeal.

How long does it take from the filing of my notice of appeal until a decision is issued?

The average time from the day the Notice of Appeal is filed to the day the decision is issued by the BAP is about ten months.

How do I know if you received my brief/motion/petition for rehearing/etc.?

If the document in question was filed using the BAP's NextGen CM/ECF system, it can be viewed immediately through PACER on the BAP's case docket sheet.

Documents filed in paper (by pro se parties or attorneys exempt from e-filing) are generally docketed within three (3) days. Once docketed, a party can view this information by accessing the PACER System located on our website.

Can I give you my change of address over the telephone?

No. If you are an electronic filer, contact information is updated through your electronic filing account via PACER. If you are not an electronic filer, you must send us your address change in writing.

See 1st Cir. BAP L.R. 8020-1(a); BAP General Order 2, Rule 2

Briefs and Appendices

When is my brief due?

You will receive a briefing order that sets briefing deadlines. Typically, the appellant will be directed to file the brief *and* appendix by a date certain which will be 30 days from the date of the order. The appellee will be instructed to file its brief, (and appendix, if any) within 30 days after service of the appellant's brief and appendix. The appellant may, but is not required, to file a reply brief within 14 days after service of the appellee's brief.

If you are the appellant and are electronically filing the brief and appendix using the BAP's NextGen CM/ECF filing system, you must e-file the documents by the date given in the briefing order. If you are not an electronic filer, you must file the brief and appendix with the Clerk's Office on or before the deadline, or deposit the brief and appendix in the U.S. mail or give it to a commercial delivery service, e.g., UPS or FedEx, on or before the date set in the briefing order. See Fed. R. Bankr. P. 8011(a)(2)(B).

Appellees must also adhere to these filing rules.

What do I include in a brief?

The brief begins with a cover page which should include the case caption (see the briefing order for the form of the case caption), the title of your brief (i.e., Appellant's Brief), and your name, address, and telephone number.

The brief must include the components described in Fed. R. Bankr. P. 8014 and 8015, and 1st Cir. BAP L.R. 8014-1, which include:

- a corporate disclosure statement, if required by Fed. R. Bankr. P. 8012;
- a table of contents;
- a table of authorities with references to the pages of the brief where they are cited;
- a jurisdictional statement (if you are the appellant), including: the basis for the bankruptcy court's subject-matter jurisdiction and the basis for the BAP's jurisdiction; the filing dates establishing the timeliness of the appeal; and an assertion that the appeal is from a final judgment, order, or decree;
- if you are the appellant, a statement of issues presented in your appeal and, for each one, a concise statement of the applicable standard of review;
- a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and describing the rulings presented for review, with appropriate references to the record;
- a summary of the legal arguments you wish to present;
- the argument, which must contain your contentions and the reasons for them, with citations to the authorities and parts of the record on which you rely;
- a short conclusion stating the precise relief you seek;
- your signature;
- a certificate of service;
- Statement Regarding Related Cases (See 1st Cir. BAP Official Form 1);
- Statement Regarding Interested Parties (See 1st Cir. BAP Official Form 2);
- a certificate of compliance, if required by Fed. R. Bankr. P. 8015(a)(7), stating the number of words or the number of lines in the document; and

Statements in briefs regarding background facts are to be supported by references to your appendix. These citations to documents in the appendix should reference the page number (e.g., App. at 27, or Appellee App. at 14). See 1st Cir. BAP L.R. 8014-1(a)(1).

**For more information regarding Briefs and Appendices, please review:
Fed. R. Bankr. P. 8014, 8015, 8018, and
1st Cir. BAP L.R. 8014-1, 8015-1, and 8018-1.**

What is the page limit for my brief?

Under Fed. R. Bankr. P. 8015(a)(7)(A), a party's opening brief is limited to 30 pages, unless it complies with subsection (B). The appellant's reply brief must not exceed 15 pages.

Fed. R. Bankr. P. 8015(a)(7)(B) dictates that a principal brief that exceeds the page limit set forth in subsection (A) is acceptable if it contains no more than 13,000 words, or it uses a monospaced face and contains no more than 1,300 lines of text. Fed. R. Bankr. P. 8015(a)(7)(B) allows briefs conforming to the aforementioned rule if the filer completes a "certificate of compliance" as set forth in Fed. R. Bankr. P. 8015(h).

Fed. R. Bankr. P. 8015(g) also specifies that corporate disclosure statements, table of contents, table of citations, statement with respect to oral argument, and an addendum containing statutes, rules or regulations, do not count toward the limitations discussed above.

Please review Fed. R. Bankr. P. 8015 for more information on the Form and Length of Briefs; Forms of Appendices and Other Papers

Why did the BAP enter an Order Regarding Deficient Brief?

The BAP will enter an Order Regarding Deficient Brief when a party's brief is not compliant with the federal and/or local rules pertaining to the filing of briefs and appendices. The Order Regarding Deficient Brief lists the deficiencies in the subject brief and instructs the party to file a corrected brief and/or appendix by a date certain.

If the appellant has to make corrections to its brief, does that change the date when my brief is due if I am the appellee?

Check the Order Regarding Deficient Brief for any possible changes to the due date for the appellee's brief.

What happens if I do not file a brief?

If an appellant fails to file a brief and/or appendix, the BAP will typically enter a Conditional Order of Dismissal directing the appellant to file the brief and/or appendix by a date certain. If the appellant then fails to file the document(s) by the specified deadline, the BAP may dismiss the appeal without further notice or hearing.

If the appellee does not file a brief, the BAP will enter an order stating the appellee has defaulted and will not be allowed to be heard at oral argument unless permitted by the Panel.

The BAP has no obligation to grant an untimely motion for extension of time to file a brief or consider a late brief.

See Fed. R. Bankr. P. 8018(a)(4), 9006(b); 1st Cir. BAP L.R. 8018-1(c)(2)

What is an appendix?

Fed. R. Bankr. P. 8018(b)(1) and 1st Cir. BAP L.R. 8018-1(b) direct the appellant to serve and file with the brief excerpts of the record as an appendix. An appendix is a compilation of the relevant documents filed in the bankruptcy court that the BAP must review in order to reach a decision in your case. Documents not listed in a party's designation of items to be included in the record on appeal cannot be included in the Appendix.

What should be included in the appendix?

The appendix, which will be a separate document from your brief, will need a cover page which includes the case caption, the title (e.g., Appellant's Appendix), and your name and address. The pages included in the appendix must be sequentially paginated.

In addition, the appellant's appendix must include the components described in Fed. R. Bankr. P. 8018 and 1st Cir. BAP L.R. 8018-1, which include:

- table of contents;
- relevant entries in the bankruptcy docket;
- the complaint and answer, or other equivalent filings;
- any pretrial order;
- the judgment, order or decree from which the appeal is taken;
- any other orders relevant to the appeal;
- the opinion, findings of fact, or conclusions of law filed or delivered orally by the court and citations of the opinion if published;
- any motion and response on which the bankruptcy court rendered decision;
- the notice of appeal;
- all transcript(s) or portions of transcripts, that are necessary for the Panel's review.

The appellee may also serve and file with its brief an appendix containing material omitted by the appellant in its appendix.

How many paper copies of my brief and appendix does the BAP need?

If filing a brief and/or appendix in paper, the BAP will need only the ***original*** brief and appendix. The brief and appendix will then be scanned and docketed using the CM/ECF filing system.

How can I get an extension of time to file my brief?

You may request an extension of time to file your brief by filing a written motion with the BAP. When “good cause” exists, the BAP may grant an extension to file a brief. Motions for extension of time should be filed before the briefing deadline expires. A motion for extension of time to file a brief should state when the brief is due, why the extension is necessary, and the amount of time being requested. Refer to 1st Cir. BAP L.R. 8018-1(c) for additional information for filing motions for extension of time.

Motion Practice

If I need an extension, can I call the BAP and ask for one?

No. All motions or other requests for judicial action must be submitted in a written pleading format; the BAP does not rule on oral motions or requests.

Do I need to provide the court with a proposed order when I file a motion?

No. The BAP does not require the submission of a proposed order with a motion.

When is a response to a motion due?

With some exceptions set forth in the Bankruptcy Rules, the non-moving party may file a response to a motion within 7 days after service of the motion. In some instances, however, the BAP may rule on a motion for a procedural order without awaiting a response. In the case of an emergency motion, the BAP may, upon request, abbreviate the time for responding.

Review the rules listed below for more information regarding motions and responses.

See Fed. R. Bankr. P. 8013; 1st Cir. BAP L.R. 8013-1.

How is time calculated?

Unless otherwise specified, Fed. R. Bankr. P. 9006(a),(b), (c), (e), and (f) apply to BAP appeals.

See Fed R. Bankr. P. 9006.

Will my response to a motion be considered timely if I mail it on the due date?

No. The response to a motion must be **received** in the Clerk's Office on or before the date it is due whether filed via CM/ECF or in paper format. If the response is post-marked on the due date, it will be considered untimely filed.

Fed. R. Bankr. P. 8013 and 9006 and 1st Cir. BAP L.R. 8013-1 address motions and responses.

Oral Argument

What is oral argument?

Oral argument is a court hearing during which both sides present their position as to why the BAP should rule in their favor. No new evidence is presented, and no exhibits are offered during oral arguments.

For most oral arguments, each side is allotted 15 minutes to present its case. The appellant may reserve some of its 15 minutes for rebuttal following the appellee's presentation. For oral arguments that take place in the courtroom (as opposed to virtually via Microsoft Teams), there will be a signal box on the lectern. Once a party begins to argue, the courtroom deputy sets the signal lights. The green light on the box will be illuminated. When the argument time has expired, the light turns red and a beep sounds. The party will be allowed to finish their line of argument, provided the argument does not continue for any great length of time. For hearings that take place virtually, however, parties are responsible for keeping track of their own time, except that the courtroom deputy will announce when one minute remains and when the time for argument has expired.

The judges who serve on the oral argument panel may ask questions during each parties' argument.

When will I be notified if my case is set for oral argument?

The BAP generally enters an Oral Argument Scheduling Order approximately six (6) weeks prior to the oral argument date. A confirmation of attendance at the oral argument form will also be docketed that same date and served upon the appellant and appellee. This form must be returned to the BAP for filing on or before the date given on the notice.

Where do I go when oral argument is scheduled in Boston?

The BAP conducts oral arguments at the John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Boston, Massachusetts. When the BAP conducts oral arguments in San Juan, Puerto Rico, it uses a courtroom at the Toledo Federal Building and Courthouse.

The Oral Argument Scheduling Order will note the courtroom where oral arguments will be held. You will also receive an Oral Argument Schedule about one week prior to the oral argument date which will also include the courtroom location. You can also check the website's Calendar section for scheduling information.

The BAP requests all parties appearing for oral argument arrive at least 15 minutes before court begins.

I am the appellee in a case, do I get time for rebuttal?

No. Only the appellant may reserve time for rebuttal following the appellee's argument. In very rare instances, the Panel may allow the appellee rebuttal time.

Does the BAP conduct all oral arguments in Boston?

No. Cases originating from the U.S. Bankruptcy Court for the District of Puerto Rico are heard in San Juan, Puerto Rico.

Do I have to come to Boston for oral argument?

Not necessarily. While the BAP usually conducts oral argument in Boston, it recognizes that travel costs can be a major factor in a bankruptcy appeal. For this reason, and depending upon the circumstances of the case, the BAP may allow parties to appear via video conference or by telephone conference. The BAP may also consider the appeal on the briefs without conducting oral argument. Depending on the case load, the BAP judges will travel to the district from which the appeal arose to conduct oral argument.

Can I come to the courtroom and listen to others present oral argument?

Yes, if oral arguments are being conducted in the courtroom. Oral arguments are public hearings.

If, however, the argument is scheduled to occur virtually, then a YouTube link to the live stream audio of the hearing will be available to the public on the BAP's website.

Can you tell me who is hearing my case?

The BAP does not release the names of the judges who will serve on a particular panel until one week prior to the oral argument session. The information will appear on the Oral Argument Schedule when it is sent to the parties and posted on the website's Calendar section. No judge from the district from where the appeal originated will be assigned to hear the appeal. For example, if the appeal is from an order entered at the bankruptcy court in Boston, a judge sitting at the bankruptcy court in Springfield, Massachusetts cannot serve on the Panel at any time throughout the appeal.

Can I fax you my oral argument acknowledgment form?

As a general rule, no. The BAP restricts the use of faxed documents to emergency, or other compelling situations only, and only upon specific approval from the Clerk.

See 1st Cir. BAP L.R. 8001-1(c)(2)

Can I continue the oral argument to another date?

The BAP generally does not allow motions to continue oral argument except for grave cause.

How can I get a copy of the transcript of an oral argument?

Transcripts are not available from the BAP. Audio recordings can be obtained by contacting the Clerk's Office. For reproducing audio records of proceedings, regardless of the medium, there will be a \$32.00 fee, including the cost of materials. You must provide to the BAP a written request which includes the case name, case number, and date of oral argument. The check for \$32.00 must be made payable to: **Clerk, U.S. Court of Appeals.**

Final Decisions

Does the BAP's website contain all its opinions?

Published and unpublished opinions are available on our website dating back to 1996.

How long does it take for an opinion to appear on the website?

The opinion is typically uploaded onto the website within 24 hours of being issued.

Does the BAP ever reverse a bankruptcy judge?

Yes. The BAP can affirm, reverse, vacate, and/or remand, any order, judgment, or decree. Sometimes a case is affirmed on some issues and reversed on others.

I want to file a motion for rehearing. When is it due and is there a filing fee?

As provided by Fed. R. Bankr. P. 8022(a)(1), a motion for rehearing must be filed within 14 days after entry of a judgment. There is no filing fee for a motion for rehearing.

Is there a response deadline for a motion for rehearing?

Yes. As provided by 1st Cir. BAP L.R. 8022-1(a), responses to a motion for rehearing are due within seven (7) days after the serving of the motion.

Is a BAP order or judgment appealed to the district court?

No. A BAP order or judgment is appealed to the U.S. Court of Appeals for the First Circuit, just as a district court order or judgment would be. An appeal to the BAP is the equivalent of an appeal to the district court.

What is the filing fee for filing a Notice of Appeal of a BAP decision to the U.S. Court of Appeals for the First Circuit?

There is a \$5.00 fee imposed by 28 U.S.C. § 1917 and a \$500.00 docketing fee imposed by the Judicial Conference of the United States under its delegated authority in 28 U.S.C. § 1913. A check in the amount of **\$505.00** is made payable to the **Clerk, U.S. Court of Appeals** and is sent to the BAP for processing.

General Information

What is the maximum file size for electronically-filed documents?

Documents filed in PDF must not exceed 6.5 megabytes.

Where can I learn more about the United States Courts?

You can learn about the United States Courts by visiting the website, <http://www.uscourts.gov>. Not only is there information available about the federal judiciary, but the website has links to forms used at federal courts as well as to the Federal Rules of Bankruptcy Procedure, the Federal Rules of Appellate Procedure, and the Federal Rules of Civil Procedure. This website also has information about filing without an attorney including finding a bankruptcy lawyer and free legal services.

How much do you charge to copy documents?

The Judicial Conference of the United States has set a fee of \$.50 per page for copies of documents. **PLEASE CALL FOR ACTUAL PAGE COUNT PRIOR TO SENDING PAYMENT FOR COPIES.** The fees must be paid in advance. Self-addressed, stamped envelopes must also be forwarded to the BAP with the proper postage.

Do you accept credit cards for copy work?

No. The BAP only accepts checks which are made payable to: “**Clerk, U.S. Court of Appeals.**”

Can you fax or email copies of briefs to me?

No. However, if you have a PACER account, you can access BAP dockets and documents through the website.

Can briefs and other documents be faxed?

Under no circumstances will the BAP accept briefs and/or appendices by fax.

The BAP Clerk is authorized, however, to consider a request to accept for filing document(s) transmitted via facsimile in situations the BAP Clerk determines present an emergency or are otherwise compelling. Such documents must be served on all other parties electronically or by fax or hand-delivery within 24 hours after the initial transmission. See 1st Cir. BAP L.R. 8001-1(c)(2).

Can you copy an entire recent case file for me, including the briefs and appendices?

No. If you have a PACER account, you can access BAP dockets and documents through the website. For older cases that are not available electronically, please call the Clerk’s Office to make arrangements for copying documents. For reproducing any document, there will be a \$.50 per page fee and other fees may apply. The Clerk’s Office will require the case name and case number.

What is the fee for retrieving a case file from the Federal Records Center or National Archives?

The fee for retrieval of one box of records from the Federal Records Center or National Archives is \$64.00. For retrievals of multiple boxes, the fee is \$39.00 for each additional box. You can contact the BAP and we will order it for you. If you want copies of all or part of the record, there is an additional \$.50 per page copying cost.

Alternatively, records may be reviewed on site at the Waltham facility or copies of case documents may be mailed or faxed from NARA directly to the requestor. Prior to calling NARA at 781-663-0130, the requestor must obtain from the Clerk's Office the case file name and number, the accession number and the box location number. To learn more about records, visit: <http://www.archives.gov>.

How long does it take for you to send me copies?

If we have the documents in our office, we should be able to send them within three (3) working days after we receive your payment.

Can I get a copy of an opinion?

Opinions in electronic form are available free of charge from the BAP's website, <http://www.bap1.uscourts.gov>. If you wish to receive a paper copy of an opinion, the cost will be \$5.00 per opinion. Fees must be paid in advance. Send payment and a postage paid, self-addressed envelope to the Clerk's Office.

How do I get certified copies of documents?

Submit in writing to the Clerk's Office your request for a certified copy of a document. Your request must specifically identify the documents you want certified. Be sure to include the case name, case number, filing date and the title of the specific documents you want certified. In addition, please include your name, address and daytime contact number, so the Clerk can reach you should any questions arise about your request. You will be charged \$.50 for each page copied, as well as assessed an \$11.00 certification fee.