

OFFICE OF THE CLERK

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

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**PRACTICE GUIDE FOR APPEALS TO THE
UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE FIRST CIRCUIT**

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Welcome to the United States Bankruptcy Appellate Panel for the First Circuit (the “BAP”). This guide is intended to assist you in understanding the appellate process at the BAP. The information in this guide is not a substitute for the Federal Rules of Bankruptcy Procedure or the First Circuit BAP Local Rules. No practice guide can be a substitute for the independent judgment of any party examining the applicable rules in the context of the facts of the case.

Please also consult our website for further information including the First Circuit BAP Local Rules and the Federal Rules of Bankruptcy Procedure, our Quick Reference Guide, and our FAQ’s. Our website may be found at: www.bap1.uscourts.gov. If you have any questions or comments about any of our guides or about the process, please contact the BAP Clerk’s Office.

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I. Introduction to Bankruptcy Appeals

The Appeals Process. Appeals from bankruptcy court orders and judgments within the First Circuit are heard by the BAP unless one of the parties elects to have a district court consider the appeal. Part VIII of the Federal Rules of Bankruptcy Procedure and 1st Circuit BAP Local Rules govern appeals to the BAP. The applicable local rules of the district court govern appeals to that court. Appeals from BAP orders and judgments are taken to the United States Court of Appeals for the First Circuit.

Highlights of Practice Before the BAP. Highlights of practice before the BAP include the following:

- A panel of three bankruptcy judges, who have expertise for resolution of bankruptcy appeals, consider each appeal. Every panel consists of judges who are not from the district from which the appeal arose.
- BAP appeals are processed and resolved quickly. The BAP begins processing an appeal upon receipt of a bankruptcy court's transmittal of the notice of appeal and related documents. Appellate briefing deadlines are promptly set following the BAP's receipt and docketing of the complete record on appeal. Thereafter, the BAP closely monitors deadlines to ensure that the appeal is being prosecuted.
- The BAP will give consideration to the requests of the parties when deciding whether to schedule oral argument and, should the circumstances warrant, the BAP allows parties to present oral argument by video conference or telephone. The BAP, either sua sponte or at the request of the parties, may decide the matter on the briefs. Depending upon the caseload, the BAP may conduct oral argument in the district from which the appeal arose.
- The BAP is accessible. The staff of the BAP Clerk's Office is available by telephone or e-mail to answer questions or provide an update about the progress of an appeal. For unrepresented filers there is a dedicated email address to receive communications. The BAP Clerk's Office is dedicated to providing friendly, efficient, quality service to the bench, the bar, and the public.

II. Filing the Notice of Appeal

General Requirements: In order to appeal a bankruptcy court's judgment, order, or decree, the appellant must file *at the bankruptcy court* a notice of appeal within 14 calendar days after entry of the bankruptcy court's judgment, order, or decree, unless the final day falls on a weekend or holiday. The notice of appeal must: (1) conform to the appropriate official form (Official Form 417A); (2) contain the names of all parties to the judgment, order, or decree along with the

names, addresses, and telephone numbers of counsel for all parties to the order or judgment; and (3) be accompanied by the appropriate fee.

Reference: Fed. R. Bankr. P. 8002 (Time for Filing Notice of Appeal); Fed. R. Bankr. P. 8003; 28 U.S.C. §§ 1930(b) and (c) (fee schedule); 1st Cir. BAP L.R. 8003-1.

Cross-Appeal. After the appellant has filed a timely notice of appeal, any other party may file a notice of cross-appeal within 14 days after the date the first notice of appeal was filed. A cross-appeal is considered a notice of appeal and must be accompanied by the appropriate filing and docketing fees.

Reference: Fed. R. Bankr. P. 8002.

Premature Notice of Appeal. A notice of appeal is considered to be premature when: (1) the notice of appeal is filed after the decision of the bankruptcy court has been announced, but before a judgment, order, or decree has been entered on the bankruptcy court's docket; or (2) the notice of appeal has been filed while a tolling motion (generally, a motion for reconsideration) is still pending. An appeal is not invalid because the notice was filed prematurely; it is merely temporarily ineffective. After the bankruptcy court enters the order or judgment, or rules on the tolling motion, the notice of appeal becomes effective. If the appellant wishes to appeal the order on the tolling motion or any modification to the original order or judgment, it must file an amended notice of appeal.

Reference: Fed. R. Bankr. P. 8002.

Interlocutory Appeal. If the judgment, order, or decree being appealed is not final, it is interlocutory. A party seeking review of an interlocutory judgment, order, or decree shall file at the bankruptcy court, contemporaneously with the notice of appeal, a motion for leave to appeal. The bankruptcy court clerk will then transmit to the BAP the notice of appeal, the motion, and any responses.

Reference: Fed. R. Bankr. P. 8004.

Bankruptcy Court Docketing of Appeal, Transmission to BAP. After the appellant files a notice of appeal, the bankruptcy court must docket the notice of appeal and serve a copy on all parties identified in the notice of appeal. The bankruptcy court will promptly transmit the notice of appeal to the BAP or district court and the BAP or district court will then docket the appeal.

Reference: Fed. R. Bankr. P. 8003; 1st Cir. BAP L.R. 8003-1.

III. Election to Have District Court Hear Appeal

General Rule: The BAP hears all bankruptcy court appeals unless a party timely elects to proceed in the district court.

Appellant's Election: An appellant electing to have the district court hear the appeal must so indicate in its Notice of Appeal. If the appellant fails to so indicate at the time the appellant files the notice of appeal, the appellant's right to elect to have the district court hear the appeal is deemed waived and the bankruptcy court will send the appeal to the BAP.

Appellee's Election: An appellee may, within 30 days after the date the bankruptcy court serves the notice of appeal, file an election to have the district court consider the appeal. The election must substantially conform to Official Form 417B. The appellee must file its election with the BAP. The appellee's filing of any document relating to the appeal, other than a notice of appearance, constitutes waiver of the right to elect to proceed in district court.

Challenges: Any party seeking a determination of the validity of an election must file a motion with the BAP within 14 days after the statement of election is filed.

Sua Sponte Transfers: The BAP may transfer an appeal to the district court to further the interests of justice or for any other reason the BAP deems appropriate including circumstances where a timely statement of election has been filed in a related appeal.

Reference: 28 U.S.C. § 158(c)(1); Fed. R. Bankr. P. 8005; 1st Cir. BAP L.R. 8005-1.

IV. Initial Steps in Prosecuting Appeal

Designation of Record and Statement of Issues. An appellant must, within 14 days after filing the notice of appeal, file with the bankruptcy court a designation of items to be included in the record on appeal and a statement of issues to be presented on appeal. Within 14 days after service of the appellant's designation, an appellee may file a designation of additional items to be included in the record on appeal. The appellee cannot file a statement of issues unless it is also a cross-appellant.

A designation of the record is a list of the documents the Panel will need to review the bankruptcy court's order or judgment. The designation must include the judgment, order, or decree that is the subject of the appeal, as well as any related findings or conclusions the court may have stated on the record or set forth in a written opinion. If the bankruptcy judge stated its findings and conclusions on the record during a hearing or trial, the designation must include a transcript of those findings and conclusions. Typically, the designation also includes, at a minimum, motions, objections, and memoranda related to the judgment, order, or decree on appeal. **The designation cannot include documents that were not before the bankruptcy court at the time the decision was rendered.** If an appellant or cross-appellant in a BAP

appeal does not file a designation of record and statement of issues, the BAP may, after notice, dismiss the appeal for failure to prosecute.

Reference: Fed. R. Bankr. P. 8009; 1st Cir. BAP L.R. 8009-1.

Ordering a Transcript. If a party intends to include a transcript of a hearing as part of the record on appeal, that party must order the transcript in writing from the reporter at the time it files its designation and make satisfactory arrangements for its payments.

Reference: Fed. R. Bankr. P. 8009(b).

V. Notice That Appeal Has Been Docketed; Deadlines

Notice. As soon as the BAP receives the notice of appeal from the bankruptcy court, the BAP will docket the appeal to open the case, and, after conducting an initial jurisdictional review, will prepare an opening letter. The letter will contain the BAP case number, general information about the BAP, and deadlines generally applicable to the case. The BAP will send the opening letter to all parties to the appeal.

Briefing Order. After the bankruptcy court has transmitted the completed record on appeal to the BAP and the BAP has docketed the same, the Clerk of the BAP will issue a briefing order. The appellant must file an opening brief and a separate appendix by the date established in the briefing order, which is generally within 30 days of the issuance of the briefing order. An appellant's failure to file a brief may result in dismissal of the appeal. The appellee must file its brief within 30 days after the date the appellant serves the opening brief and appendix. Failure of an appellee to file a brief timely may result in loss of the right to be heard at oral argument. The appellant may file an optional reply brief within 14 days after the date the appellee serves the appellee's brief.

ECF filers must file briefs and appendices electronically. An electronically filed appendix may contain multiple attachments. The description of each PDF attachment as entered by the ECF filer should identify the page numbers within the appendix, for example "Appendix, pages 51-100."

Briefs and appendices of pro se filers received by the BAP via U.S. Mail or third-party delivery systems will be considered filed on the date the document(s) are mailed.

Reference: Fed. R. Bankr. P. 8018; 1st Cir. BAP L.R. 8018-1; BAP General Order No. 2.

VI. Briefs and Appendix

Form of Briefs.

An **appellant's** brief *must* contain the following:

- (1) a corporate disclosure statement, if required by Fed. R. Bankr. P. 8012;
- (2) a properly constructed cover sheet;
- (3) a table of contents with page references;
- (4) a table of authorities with cases in alphabetical order with page references;
- (5) a statement regarding oral argument setting forth the reasons oral argument should, or need not, be heard, as required by 1st Cir. BAP L.R. 8019-1(a);
- (6) a statement of the basis of appellate jurisdiction;
- (7) a statement of the issues presented and the applicable standard of review;
- (8) a concise statement of the case setting out facts relevant to issues submitted for review describing relevant procedural history, and identifying rulings presented for review, with appropriate references to the record;
- (9) a summary of the argument;
- (10) an argument, with citations to authorities and parts of the record on which the appellant relies, and in the format prescribed by 1st Cir. BAP L.R. 8014-1(a)(1);
- (11) a short conclusion stating the relief sought; and
- (12) statements regarding any related cases and/or of interested parties. See 1st Cir. BAP L.R. Official Forms 3 and 4.

An **appellee's** brief *must* contain the following:

- (1) a properly constructed cover sheet;
- (2) a table of contents with page references;
- (3) a table of authorities with both cases in alphabetical order and with page references;
- (4) a statement regarding oral argument setting forth the reasons oral argument should, or need not, be heard, as required by 1st Cir. BAP L.R. 8019-1(a);
- (5) an argument, with citations to authorities and parts of the record on which the appellant relies, and in the format prescribed by 1st Cir. BAP L.R. 8014-1(a)(1); and
- (6) statements regarding any related cases and/or of interested parties. See 1st Cir. BAP L.R. Official Forms 3 and 4.

An **appellee's** brief *may* also contain the following:

- (1) a statement of the basis of appellate jurisdiction;
- (2) a statement of the issues presented and the applicable standard of review; and
- (3) a concise statement of the case setting out facts relevant to issues submitted for review describing relevant procedural history, and identifying rulings presented for review, with appropriate references to the record.

Reference: Fed. R. Bankr. P. 8014; 1st Cir. BAP L.R. 8014-1.

Page Limits and Format. Appellant’s and appellee’s opening or initial briefs are limited to 30 pages and appellant’s reply brief is limited to 15 pages, exclusive of the cover page, table of contents, table of citations, addendum, statement of reasons for oral argument and location, proof of service, and statement of related case(s). Text must be no smaller than 11-point font and, except for indented quoted material or footnotes, must be double-spaced. Each page must have one-inch margins on all sides.

A principal brief that exceeds 30 pages will still be acceptable if it either: (1) contains no more than 13,000 words; or (2) uses a monospaced face and contains no more than 1,300 lines of text. Such a brief must include a “certificate of compliance” attesting that the document complies with the word or line count limitations and stating the number of words—or the number of lines of monospaced type—in the document.

Reference: Fed. R. Bankr. P. 8015; 1st Cir. BAP L.R. 8015-1.

Appendix. The appellant is required to provide an appendix to the brief containing excerpts from the record on appeal that are necessary for the Panel’s review. The appellant’s appendix must contain the following:

- (1) the relevant entries in the bankruptcy docket;
- (2) the complaint and answer or other equivalent pleadings;
- (3) any pretrial order;
- (4) the judgment, order, or decree from which the appeal is taken;
- (5) any other orders relevant to the appeal;
- (6) the opinion, findings of fact, or conclusions of law filed or delivered orally by the court and citations of the opinion if published;
- (7) any motion and response on which the bankruptcy court rendered decision;
- (8) the notice of appeal; and
- (9) all transcripts, or portions of transcripts, that are necessary for the Panel’s review.

An appellee may file an appendix containing any papers that the appellant failed to provide.

Reference: Fed. R. Bankr. P. 8018(b)

Form of Appendix. The appendix should be sequentially paginated and have a table of contents with the page number at which each item appears. When more than one party files an appendix, the parties should avoid including items which another party has previously incorporated in an appendix. The duplicate item may be included by reference. The appendix must be filed as a document separate from the brief. Each page must have one-inch margins on all sides.

Number of Copies. A party need only file one copy of the appendix.

Translations Required. 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 or brief and the

cited authority is not available in English, an official, certified, or stipulated translation must be filed. **The BAP will disregard documents not in the English language unless translations are furnished.**

Consequence of Noncompliance: The BAP may reject or disregard any brief or appendix that fails to comply with any of the foregoing requirements.

Reference: Fed. R. Bankr. P. 8011, 8018; 1st Cir. BAP L.R. 8011-1, 8015-1(a), 8018-1.

VII. Motion Practice

General Procedures. The motion must contain the following:

- (1) A statement of the particular grounds on which the motion is based;
- (2) A statement of the order or relief sought;
- (3) Proof of service on all parties to the appeal; and
- (4) Anything required to accompany the motion by a specific provision of the Federal Rules of Bankruptcy Procedure or the First Circuit BAP Local Rules.

Response to Motions. With some exceptions, the deadline to respond to motions is seven (7) days.

Emergency Motion. A moving party may request expedited relief when such relief is necessary to avoid immediate and irreparable harm. Such a motion must include the following:

- (1) the word “Emergency” preceding the title of the motion;
- (2) an affidavit stating the nature of the emergency and when and how opposing counsel was notified of the motion; if opposing counsel was not notified, the affidavit must state why it was not practicable to do so;
- (3) a statement as to whether all of the grounds presented to the BAP in support of the motion were presented to the bankruptcy court; if all the grounds were not presented to the bankruptcy court, the motion must also state why the motion should not be remanded to the bankruptcy court for reconsideration; and
- (4) the office addresses and telephone numbers of opposing counsel or pro se parties.

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

Motion for Stay Pending Appeal. A motion for stay of the bankruptcy court’s order pending appeal should first be presented to, and ruled upon, by the bankruptcy court. The motion should be filed with the BAP only after the bankruptcy court has denied the motion or must set forth why the movant could not first seek relief in the bankruptcy court. Pursuant to 1st Cir. BAP L.R. 8007-1(a), relief may be denied if the motion for stay is not presented “promptly.” If the motion

for stay is an emergency motion, the motion must also comply with Fed. R. Bankr. P. 8013(d) and 1st Cir. BAP L.R. 8013-1.

Reference: Fed. R. Bankr. P. 8007; 1st Cir. BAP L.R. 8007-1.

Motion for Extension of Time for Filing a Brief. A party requesting an extension of time for filing a brief must file the motion within the time limit established by the briefing order for the filing of such brief. The motion must be supported by a declaration which must include: any previous briefing deadlines; how many extensions of time, if any, have been granted; and whether any previous requests for extension of time have been denied or denied in part. The motion requesting an extension of time must also provide the reason why such an extension is necessary, and the amount of time requested.

1st Cir. BAP L.R. 8018-1(c)(1).

VIII. Oral Argument

General Procedure. The BAP conducts oral argument in all cases unless the BAP judges assigned to hear the appeal determine that oral argument is not necessary, or the parties submit a written stipulation waiving oral argument. See Fed. R. Bankr. P. 8019(b), 1st Cir. BAP L.R. 8019-1(b) and (d).

Statement Regarding Oral Argument. The parties shall include in their opening briefs a statement limited to one-half page setting forth the reasons why oral argument should or should not be heard. Should a party have a preference as to the location of the argument, such a preference should be included in this section.

Location of Oral Argument. Argument may be conducted: (i) in Boston or San Juan, Puerto Rico, (ii) the district from which the appeal arose; or (iii) virtually, using Microsoft Teams.

Notice of Oral Argument. To the extent possible, the BAP conducts oral argument the third Monday of each month and sets the calendar approximately six weeks prior to the hearing date. After the BAP places a case on the oral argument calendar, it will issue an Oral Argument Scheduling Order setting forth the date, time, and location. Additionally, the BAP will issue an Oral Argument Acknowledgment Form. Each appearing attorney and/or pro se party must return a completed form by the response deadline set forth in the form.

Change of Date or Place of Argument. After the date of the Notice of Oral Argument is issued, the date or place of the argument will not be changed without leave of the Panel.

Guidelines for Argument. Argument time is generally limited to 15 minutes for each side, though this may be reduced or lengthened by the Panel. Cross-appeals, consolidated appeals, or companioned appeals may be argued as one case. The appellant is entitled to proceed with argument first and may reserve part of its allotted time for rebuttal after the appellee presents its

argument. The appellee is not entitled to rebuttal unless the Panel rules otherwise. Parties can expect that the Panel will have reviewed the record and briefs and will be familiar with the facts and issues of the case. Argument should be devoted to key points, clarifying issues as needed, and responding to questions from the judges.

Video/Telephone Conference. A party may request, or the Panel may determine, oral argument will be conducted by videoconference or by telephone.

Reference: Fed. R. Bankr. P. 8019; 1st Cir. BAP L.R. 8019-1.

IX. Opinions

General Procedure. Once the BAP issues its opinion, the BAP Clerk will enter the judgment on the docket and send notice, together with a copy of the opinion, to all parties and the clerk of the bankruptcy court.

Motion for Rehearing. A party may file a motion for rehearing with the BAP within 14 days after the date the judgment was entered. Timely filing of the motion tolls the time for filing a notice of appeal to the United States Court of Appeals for the First Circuit. Parties responding to a motion for rehearing may do so within seven days after serving of the motion.

Reference: Fed. R. Bankr. P. 8022, 8024; 1st Cir. BAP L.R. 8022-1, 8024-1

Stay Pending Further Appeal to the United States Court of Appeals for the First Circuit.

Pursuant to Fed. R. Bankr. P. 8025, the judgment of the BAP is automatically stayed for 14 days from the date the judgment was entered. On motion of a party to the BAP, the stay may be extended to 30 days from the date the judgment was entered for cause shown. A stay of longer than 30 days may be granted for cause shown. The filing of a notice of appeal while a stay is in effect, however, automatically extends the stay until the First Circuit finally disposes of the appeal.

Mandate. The BAP issues the mandate 21 days after the judgment is issued as provided in Fed. R. App. P. 41. The BAP transmits the mandate to the bankruptcy court, thereby returning jurisdiction to the bankruptcy court. The judgment is automatically stayed while a timely filed motion for rehearing is pending, or while the Panel is considering a motion for stay under Fed. R. Bankr. P. 8025(b).

X. Appeals to the United States Court of Appeals for the First Circuit

General Procedure. Appeals from judgments and orders of the BAP are taken to the United States Court of Appeals for the First Circuit. The appellant must file the notice of appeal, with the appropriate filing fee, with the Clerk of the BAP. The time for filing an appeal is 30 days from the date of entry of the judgment, or 60 days if the United States is a party. See Fed. R.

App. P. 4(a)(1) (made applicable by Fed. R. App. P. 6). The United States Court of Appeals for the First Circuit requires the appellant to file a docketing statement within 14 days after the date of filing the notice of appeal. See First Circuit L.R. 3.0.

XI. General Information

Rules of Practice. Part VIII of the Federal Rules of Bankruptcy Procedure and the BAP Local Rules govern appeals to the BAP. To the extent the foregoing rules are silent as to a particular matter of practice, the BAP may apply the First Circuit Local Rules and the Federal Rules of Appellate Procedure. Copies of the local rules of the BAP may be obtained by downloading them from the Internet at www.bap1.uscourts.gov or requesting a copy from the BAP Clerk's Office.

Calculation of Time. Time is calculated using Fed. R. Bankr. P. 9006.

Filing Papers with the BAP. Attorneys must file papers electronically unless the BAP has determined they are exempt. See General Order No. 2. Unrepresented litigants must file documents by mail ("mail" includes first class mail, any other mail that is as expeditious as first-class mail, or dispatch to a third-party commercial carrier for delivery within three (3) calendar days), and in some limited circumstances, may be permitted to submit email filings to the court. If not filed electronically, all documents—other than briefs and appendices—are deemed filed when received at the Clerk's Office. Unless filed electronically, the BAP deems briefs and appendices filed on the date mailed.

Reference: Fed. R. Bankr. P. 8011; 1st Cir. BAP L.R. 8011-1. Reference: Fed. R. Bankr. P. 8022, 8024; 1st Cir. BAP L.R. 8022-1, 8024-1 Reference: Fed. R. Bankr. P. 8022, 8024; 1st Cir. BAP L.R. 8022-1, 8024-1.