

UNITED STATES
BANKRUPTCY APPELLATE PANEL
FOR THE FIRST CIRCUIT

Local Rules



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JUDGES

Hon. Edward A. Godoy, Chief Judge

Hon. Enrique S. Lamoutte, U.S. Bankruptcy Judge

Hon. Frank J. Bailey, U.S. Bankruptcy Judge

Hon. Mildred Flores Cabán, U.S. Bankruptcy Judge

Hon. Melvin S. Hoffman, U.S. Bankruptcy Judge

Hon. Diane Finkle, U.S. Bankruptcy Judge

Hon. Bruce A. Harwood, U.S. Bankruptcy Judge

Hon. Peter G. Cary, U.S. Bankruptcy Judge

Hon. Michael A. Fagone, U.S. Bankruptcy Judge

Hon. Christopher J. Panos, U.S. Bankruptcy Judge

Hon. Elizabeth D. Katz, U.S. Bankruptcy Judge

OFFICERS

Leslie C. Storm, Clerk of Court

Gwen May, Judicial Law Clerk

Ann Williams, Case Manager

AMENDMENTS

December 1, 2014

§ This edition of the rules supersedes the May 2010 publication.

LOCAL RULES

1st Cir. BAP L.R. 8001-1. Title; Effective Date; Method of Transmitting Documents

(a) **Title.** These local rules, promulgated under Fed. R. Bankr. P. 8026, shall govern practice before the United States Bankruptcy Appellate Panel for the First Circuit (the “BAP”) and shall be known as the First Circuit BAP Local Rules. They shall be cited as “1st Cir. BAP L.R. .”

(b) **Effective Date.** These rules shall take effect on December 1, 2014, with respect to pending cases and those filed thereafter insofar as is just and practicable.

(c) **Method of Transmitting Documents.**

(1) **Electronic Case Filing.** BAP General Order No. 2, Order Regarding Case Management/Case Filing System (CM/ECF), sets forth the provisions for the electronic filing of documents in cases before the BAP and the exceptions thereto.

(2) **Facsimile Filing.** The BAP clerk is authorized 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 facsimile or hand delivery within 24 hours after the initial transmission.

1st Cir. BAP L.R. 8003-1. Filing the Notice of Appeal

(a) **Filing Requirements.** A notice of appeal, substantially in conformance with Official Bankruptcy Form 17A, shall be filed with the appropriate bankruptcy court with the filing fee in the total amount provided in 28 U.S.C. § 1930(c) and the Bankruptcy Court Miscellaneous Fee Schedule promulgated pursuant to 28 U.S.C. § 1930(b). In addition to the requirements set forth in Fed. R. Bankr. P. 8003(a)(3), the appellant shall include in the notice of appeal the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys.

(b) **Separate Notices.** A separate notice of appeal and filing fee shall be filed for each bankruptcy court judgment, order, or decree being appealed except as provided in Fed. R. Bankr. P. 8002(b)(3).

(c) **Consequence of Noncompliance.** The BAP may dismiss the appeal if the appellant fails:

(1) within 14 days after filing the notice of appeal or the order granting the motion for leave to appeal to pay the filing fee or to file a motion to waive the filing fee; or

(2) to pay the filing fee within 14 days after the entry of the order denying the motion to

waive the fee unless the bankruptcy court orders otherwise.

1st Cir. BAP L.R. 8005-1. Forum for Appeal; Elections

(a) Appeals to the BAP. Pursuant to 28 U.S.C. § 158(c)(1), all appeals from bankruptcy courts are to the BAP, unless one of the parties to the appeal elects to have the district court hear the appeal.

(b) Election to Have District Court Hear Appeal.

(1) Appellant Election; Waiver. To elect to have the district court hear the appeal, an appellant must indicate the election in the notice of appeal. The notice of appeal shall conform substantially to Official Form 17A. Failure to include a statement of election in a notice of appeal will result in a waiver of the right of election under 28 U.S.C. § 158(c)(1).

(2) Appellee Election; Waiver. An appellee electing to have the district court hear the appeal shall file with the BAP, within 30 days from service of the notice of appeal, a statement of election that conforms substantially to Official Form 17B. Failure to elect within the time prescribed will result in a waiver of the right of election under 28 U.S.C. § 158(c)(1). Unless the BAP orders otherwise, the filing of any document(s) (other than a notice of appearance) by an appellee with the BAP or with the bankruptcy court in connection with an appeal prior to filing a statement of election will result in a waiver of any time remaining in the 30 day election period.

(c)) Transfer. 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. The BAP clerk will notify the bankruptcy clerk of the transmission.

1st Cir. BAP L.R. 8007-1. Stay Pending Appeal

(a) Time to File. The BAP may deny a motion for stay if it is not presented promptly. If the motion is an emergency motion, the movant shall comply with Fed. R. Bankr. P. 8013(d) and 1st Cir. BAP L.R. 8013-1(d).

1st Cir. BAP L.R. 8008-1. Indicative Rulings

(a) Notice to the Court Where the Appeal is Pending. If a party files a timely motion in the bankruptcy court for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, and the bankruptcy court issues a ruling under Fed. R. Bankr. P. 8008(a), the movant shall, within 7 days, file with the BAP a motion in which it will notify the BAP of the bankruptcy court ruling and indicate whether it is seeking an order of remand and retention of jurisdiction or whether it is seeking an order dismissing the appeal.

(b) Remand After An Indicative Ruling. If the BAP issues an order of remand and retention of jurisdiction, the movant shall, within 7 days after the bankruptcy court has issued an order on the

underlying motion for relief, file with the BAP a report indicating the disposition of the underlying motion for relief and whether the appeal has been rendered moot or the movant intends to proceed with the appeal.

1st Cir. BAP L.R. 8009-1. Record on Appeal

(a) Inadequate Record. The BAP need not remedy any failure by a party to designate an adequate record.

Rule 8010-1. Transmitting the Record; Notification of Bankruptcy Court Motions

(a) Transmitting An Incomplete Record. If, after the expiration of the deadlines set forth in Fed. R. Bankr. P. 8009(a), the record is incomplete, the bankruptcy clerk may transmit to the BAP a Certificate of Readiness indicating that the record is incomplete. When the deficiency is cured, the bankruptcy clerk may send a Supplemental Certificate of Readiness.

(b) Notification of Bankruptcy Court Motions. If, after the BAP docketed the appeal, any motion regarding the matter on appeal is filed at the bankruptcy court, the bankruptcy court clerk shall promptly notify the BAP clerk of the filing of the motion and any order disposing of the motion.

1st Cir. BAP L.R. 8011-1. Filings; Translation(s) Required

(a) Timeliness. Unless the BAP orders otherwise, any document(s), other than briefs and appendices, which are not filed electronically are timely filed if received in the office of the BAP clerk by 5:00 p.m. All documents filed shall be received and docketed by the BAP clerk, whether or not timely filed. The BAP has established procedures for electronic filing of documents, with certain exceptions, as set forth in General Order No. 2 and any amendments to that order.

(b) Translation(s) Required. The BAP will disregard any document(s) not in the English language unless a contemporaneous official, certified, or stipulated translation(s) is furnished. Whenever a party cites to a statute, Rule, or regulation of the Commonwealth of Puerto Rico ("Puerto Rico"), 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 shall be filed. Translations of pertinent and relevant excerpts of the foregoing may be accepted if stipulated to by the parties or submitted by a party not less than 30 days before oral argument. Where translations of excerpts are submitted by one 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.

(c) Privacy Protection. An appeal in a case or proceeding to which Fed. R. Bankr. P. 9037 privacy protection applied is governed by the same rule on appeal. In all other appeals, Fed. R. Civ. P. 5.2 privacy protection governs. The BAP clerk may but shall not be required to redact

personally identifiable information that a party neglects to redact.

(d) Hyperlinks. Electronically filed documents may, but need not, contain hyperlinks except as stated herein. Hyperlinks to cited authority may not replace standard citation format and will not be considered part of the record. The BAP accepts no responsibility for the availability or functionality of any hyperlink and does not endorse the content or provider of any hyperlink.

1st Cir. BAP L.R. 8012-1. Corporate Disclosure Statement

(a) Statement. Filing a timely Statement Regarding Interested Parties pursuant to 1st Cir. BAP L.R. 8014-1(a)(3) satisfies a party's obligation under Fed. R. Bankr. P. 8012.

1st Cir. BAP L.R. 8013-1. Motions

(a) Procedural Motions.

(1) Clerk Authorized. The BAP clerk may act on the following motions without submission to a single judge or a panel of judges:

- (A)) Motions relating to the production or filing of the record, transcripts, appendices, or briefs on appeal, including motions to seal;
- (B)) Motions for voluntary dismissal of appeals;
- (C) Motions to dismiss for want of prosecution;
- (D)) Motions for extension of time;
- (E)) Motions seeking a determination of the validity of an election;
- (F) Motions for reconsideration under 1st Cir. BAP L.R. 8013(a)(2);
- (G) Motions for leave to consolidate appeals; and
- (H) Such other motions as the BAP may designate and that are subject to disposition by a single judge under Fed. R. Bankr. P. 8013(e).

(2) Reconsideration. Unless the BAP clerk grants reconsideration, a motion for reconsideration of orders disposing of any motions listed in 1st Cir. BAP L.R. 8013-1(a)(1) will be submitted to a single judge or panel of judges. Such a motion must be filed within 14 days of service of notice of the entry of the order.

(b) Substantive Motions. The BAP clerk shall forward substantive motions (e.g., motions for leave to appeal, to dismiss an appeal, or to reduce bond) to an appropriate judge(s) for determination.

(c) Summary Disposition. At any time, on motion of any appellant, any appellee, or sua sponte, the BAP may:

(1) dismiss the appeal if the BAP lacks jurisdiction;

(2) dismiss the appeal, grant any other request for relief, or affirm and enforce the judgment, order, or decree below if it appears that no substantial question is presented; or

(3) reverse in the case of obvious error.

(d) Emergency Motions.

(1) **Notice.** Before filing an emergency motion, the movant shall telephone the BAP clerk to provide advance notice of the filing. Emergency motions and responses shall be filed and served by the quickest method available. Although documents may be filed any time through CM/ECF, the filer should not expect that the filing will be addressed outside regular business hours.

(2) **Form and Content.** A party requesting emergency determination shall plainly title its motion as one for emergency relief. The motion shall set forth a date or period within which it seeks such determination and request that the period for response be reduced to a specified date or period.

1st Cir. BAP L.R. 8014-1. Briefs

(a) Content.

(1) **References to Appendix.** Statements in briefs regarding background facts shall be supported by citation to the appendix. Citations to documents in the appendix shall be to pages of the appendix (e.g., App. at 27, or Appellee App. at 14) rather than to page numbering that appear on original papers.

(2) **Statement Regarding Related Cases.** Any party filing a brief shall file a statement, attached to the last page of its brief and substantially in the form of 1st Cir. BAP L.R. Official Form 1, indicating whether the party knows of a related case pending before the Supreme Court of the United States or any United States Court of Appeals, United States District Court, or BAP. The filing is excluded from the brief length limitations.

(A) **Related Case.** A related case is one that involves substantially the same litigants and substantially the same fact pattern or legal issues as the pending appeal.

(3) **Statement Regarding Interested Parties.** Any party filing a brief, other than governmental parties, shall file a statement, attached to the last page of its brief and substantially in the form of 1st Cir. BAP L.R. Official Form 2, indicating whether the party knows of any interested party who is not listed in the notice of appeal. The filing is excluded from the brief length limitations.

(A) **Interested Party.** An “interested party” includes all persons, associations, firms, partnerships, corporations, guarantors, insurers, affiliates, or other legal entities that are financially interested in the outcome of the appeal. When a corporation is a party to an appeal, the Statement of Interested Parties shall identify any parent corporation and any publicly held

corporation that owns 10% or more of its stock or state that there is no such corporation. An individual listing is not necessary if a large group of persons or firms can be specified by a generic description. The Statement of Interested Parties shall include the names of attorneys who have previously appeared for a party in the case or proceeding below but who have not entered an appearance with the BAP.

1st Cir. BAP L.R. 8015-1. Form of Briefs, Appendices, and Other Documents

(a) Nonconforming Documents. The BAP shall exercise its discretion in determining whether to accept documents which do not meet all the requirements of Fed. R. Bankr. P. 8014 and 8015.

1st Cir. BAP L.R. 8018-1. Filing Briefs, Appendices, and Other Documents

(a) Filing of Briefs or Appendices. After the BAP docket the record, it will issue a briefing order setting forth the deadlines for the filing of all briefs and appendices. Briefs and appendices filed electronically must be filed on or before the date provided in the briefing order. Briefs and appendices not filed electronically may be timely filed if they are sent in compliance with Fed. R. Bankr. P. 8011(a)(2)(B). Under no circumstances will the BAP clerk accept for filing by facsimile briefs and appendices.

(b) Form of Appendix. In addition to the provisions for an appendix set forth in Fed. R. Bankr. P. 8009 and 8018, an appendix shall be a document separate from the brief, contain a cover page with the case caption, and be sequentially paginated. Only documents properly before the bankruptcy court may be included in the appendix.

(c) Motion for Extension of Time for Filing a Brief.

(1) Requirements. A motion for extension of time for filing a brief shall:

(A) be filed within the time limit established by the briefing order for the filing of such brief;

(B) be supported by a declaration setting forth any previous briefing deadlines; how many extensions of time, if any, have been granted; and whether any previous requests for extensions of time have been denied or denied in part; and

(C) briefly recite the reasons why such an extension is necessary and the amount of time requested.

(2) Consequence of Failure to File Brief Timely. An appellant's failure to file a brief timely may result in dismissal of the appeal. An appellee's failure to file a brief timely may result in loss of the right to be heard at oral argument. Briefs filed late shall be accompanied by a motion in accordance with subsection (c) of this rule. The BAP has no obligation to grant an untimely motion for an extension of time to file a brief or consider a late brief.

1st Cir. BAP L.R. 8019-1. Oral Argument

(a) **Statement Regarding Oral Argument.** The parties shall 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 (the “Statement”). The 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 “Statement Regarding Oral Argument.” The Statement shall not be considered in determining the maximum number of pages in the brief.

(b) **Waiver of Oral Argument.** Oral argument may be waived upon written stipulation of the parties, unless the BAP orders otherwise.

(c) **Telephone or Videoconference.** A party may request in the Statement, or the BAP may determine, that oral argument shall be conducted by telephone or by videoconference.

(d) **Exceptions to Oral Argument.** If the BAP concludes that oral argument is unnecessary, based on the standards set forth in Fed. R. Bankr. P. 8019(b), it will promptly advise the parties.

(e) **Presentation of Oral Argument.** At oral argument the parties may expect the panel of judges to be familiar with the briefs and the record on appeal. The BAP will permit no more than 15 minutes per side for oral argument unless it announces otherwise. 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.

(f) **Location of Oral Argument.** The BAP generally conducts oral argument monthly in Boston. For cases originating in Puerto Rico, Maine, New Hampshire, and Rhode Island, the BAP may conduct oral argument in those districts. The parties may set forth their preference for the timing or location of oral argument in the Statement. The BAP may accommodate those preferences depending on considerations of scheduling and caseload.

(g) **Change of Date, Method, or Place of Hearing.** Once the BAP schedules an appeal for oral argument, it will only grant motions to change the date, method, or location for good cause shown.

1st Cir. BAP L.R. 8020-1. Diligent Prosecution of Appeals

(a) **Reporting Changes.** Attorneys who are not filing electronically and pro se parties shall immediately file with the BAP a statement of any address, telephone number, or facsimile number changes.

(b) **Dismissal 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 the First Circuit BAP Local Rules, the BAP clerk may enter an

order dismissing the appeal for failure to prosecute.

(1) Discretion to Reinstate. The BAP may reinstate the appeal upon a motion by a defaulting party, within 14 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.

(c)) Sanctions for Vexatious Litigation. When any party to a proceeding before the BAP or any attorney practicing before the BAP files a motion, brief, or other document that is frivolous or interposed for an improper purpose, such as to harass or to cause unnecessary delay, or unreasonably or vexatiously increases litigation costs, the BAP may, on its own motion, or on a motion of a party, impose appropriate sanctions on the offending party, the attorney, or both. Any party or attorney on whom sanctions may be imposed under this rule shall be afforded an opportunity to respond within fourteen days of service of a motion or an order to show cause before sanctions are imposed by the court.

1st Cir. BAP L.R. 8022-1. Motion for Rehearing

(a) Responses. Parties responding to a motion for rehearing may do so within 7 days after the serving of the motion.

1st Cir. BAP L.R. 8024-1. Office of the Clerk

(a) Communication with the BAP. All communication with the BAP shall be addressed to the BAP clerk at the following address:

U.S. Bankruptcy Appellate Panel for the First Circuit
John W. McCormack
Post Office and Court House
5 Post Office Square, Suite 910
Boston, MA 02109
(617) 748-9650

(b) Hours of the BAP. The office of the BAP clerk shall be open for business during the hours posted at the website located at <http://www.bap1.uscourts.gov> except for legal holidays as that term is defined in Fed. R. Bankr. P. 9006(a). For information regarding emergency or weather closings, parties may telephone the BAP clerk or consult the website.

1st Cir. BAP L.R. 8026-1. Local Rules

(a) Application of the Federal Rules of Bankruptcy Procedure. Unless otherwise altered or suspended by these rules or by court order, Part VIII of the Federal Rules of Bankruptcy Procedure and all relevant Official Forms apply to BAP proceedings.

(b) Silence of the Local Rules. To the extent the Federal Rules of Bankruptcy Procedure and these rules are silent as to a particular matter of practice, the BAP may apply the Local Rules of the United States Court of Appeals for the First Circuit and the Federal Rules of Appellate Procedure.

(c)) Definitions. The definitions set forth in 11 U.S.C. § 101 are applicable to the rules set forth in Fed. R. Bankr. P. 8000, et seq. and the First Circuit BAP Local Rules.

1st Cir. BAP L.R. 9009-1. Official Forms

The BAP adopts the 1st Cir. BAP L.R. Official Forms appended hereto and such forms shall be utilized in cases and proceedings filed with the BAP under Title 11 of the United States Code. The 1st Cir. BAP L.R. Official Forms may be amended and supplemented from time to time.

1st Cir. BAP L.R. 9010-1. Entry of Appearance and Admission to Practice

(a) Notice of Appearance. An attorney who represents a party in an appeal, and who is not identified in the notice of appeal or a notice of substitution of attorney, shall immediately file and serve a notice of appearance containing the attorney's name, address, telephone number, bar number, and facsimile number.

(b) Appearance. Notwithstanding the previous subsection, an attorney who authorizes his or her name to appear on any pleading filed with the BAP has entered an appearance.

(c)) Withdrawal and Substitution. An attorney who has entered an appearance may not withdraw without either:

(1) filing and serving a Notice of Substitution of Attorney. The notice shall contain substitute counsel's name, bar number, address, telephone number, facsimile number, and signature; or

(2) obtaining an order of the BAP allowing the attorney to withdraw. The BAP may grant such an order if an attorney files and serves on opposing counsel and the attorney's client a motion to withdraw as counsel. Any motion to withdraw shall include the client's current address and telephone number. Where an attorney appeared on behalf of a corporation, the motion to withdraw will be considered in conjunction with 1st Cir. BAP L.R. 9010-2.

(d) Admission. An attorney 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 a United States Bankruptcy Court in the case or proceeding on appeal.

(e) Pro Hac Vice. Any attorney not admitted to practice by the United States Court of Appeals for the First Circuit, a United States District Court within the First Circuit, or a United States Bankruptcy Court in the case or proceeding on appeal may, upon a motion, appear and practice before the BAP in a particular action at the BAP's discretion. All such motions shall have attached a supporting affidavit containing the following:

(1) the attorney's address, telephone number, and facsimile number;

(2) a listing of the court(s) to which the attorney has been admitted to practice and the date(s) of admission;

(3) a statement that the attorney is in good standing and eligible to practice in the court(s);

(4) a statement that the attorney is not currently suspended or disbarred in any jurisdiction;

(5) a statement describing the nature and status of any pending disciplinary matters involving the attorney; and

(6) a statement that the attorney is familiar with the requirements of Rule VIII of the Rules of Attorney Disciplinary Enforcement for the Court of Appeals for the First Circuit, made applicable through 1st Cir. BAP L.R. 8018-1.

1st Cir. BAP L.R. 9010-2. Pro Se Parties

The signature of an individual not represented by counsel on a pleading shall constitute a pro se appearance. All other parties shall appear only through counsel. Pro se parties shall ensure their appeal is perfected in a manner and within the time limits prescribed in these rules and shall prosecute the appeal with diligence.

1st Cir. BAP Official Form 1

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

BAP NO. 00-000

Bankruptcy Case No. 00-00000

,
Debtor(s).

,
Appellant(s),

v.

,
Appellee(s).

STATEMENT REGARDING RELATED CASES
1st Cir. BAP L.R. 8014-1(a)(2)

- ☐ The undersigned certifies that the following are known related cases and appeals:

Case Name	Court	Status of Case
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- ☐ The undersigned certifies that the undersigned knows of no related cases or appeals as that term is defined in 1st Cir. BAP L.R. 8014-1(a)(2)(A).

Attorney or Pro Se Party
Address
Telephone Number
Facsimile Number

1st Cir. BAP Official Form 2

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

BAP NO. 00-000

Bankruptcy Case No. 00-00000

,
Debtor(s).

,
Appellant(s),

v.

,
Appellee(s).

STATEMENT REGARDING INTERESTED PARTIES

1st Cir. BAP L.R. 8014-1(a)(3)

☐ The undersigned certifies that the following parties have an interest in the outcome of this appeal. These representations are made to enable the judges of the Panel to evaluate possible disqualification or recusal.

☐ The undersigned certifies that the undersigned knows of no interested party as that term is defined in 1st Cir. BAP L.R. 8014-1(a)(3)(A).

Attorney or Pro Se Party
Address
Telephone Number
Facsimile Number