

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE**

APPEALS QUICK LIST*

(with attached excerpts from the Federal Rules of Bankruptcy Procedure [Fed. R. Bankr. P.]
and the Local Bankruptcy Rules and Forms [L.B.R.], effective, as amended,
December 1, 1995)

- * **Notice of Appeal shall be filed within 10 days of entry of the judgment, order, or decree appealed from. (Page 3, #1)**
- * **Filing fee re Notice of Appeal of a final judgment, order or decree - \$105 (Page 3, #1)**
- * **Appellant to file designation of items and statement of the issues within 10 days of filing of Notice of Appeal. (Page 3, #2)**
- * **If one requests a transcript, ORDER IT RIGHT AWAY through the Electronic Court Recording Officer. (Page 3, #3)**
- * **Provide copies of designated items or make arrangements for Court to provide copies. (Page 3, #4)**
- * **Appellee has 10 days after service of Appellant's statement of issues to file designation of additional items. (Page 4, #6)**
- * **Cross Appeals may be filed within 10 days of the filing of the original Notice of Appeal. Filing fee - \$105. Cross Appellant's statement of issue and designation of record to be filed within 10 days of original Appellant's statement. (Page 4, #7)**
- * **Appeal from an interlocutory judgment, order, or decree requires Notice of Appeal, Motion for Leave to Appeal, and Proof of Service. Filing fee - \$5. Adverse party has 10 days after service of motion to file an answer in opposition. (Page 4, #8)**

**The information listed herein is intended for informational purposes only and is in no way intended as a substitute for legal counsel, nor is it to be construed as a 'complete' guide to appeals.*

LIST OF TERMS

1. *Appeal - Resort to a superior court to review the decision of an inferior court.
2. *Appellant - The party who takes an appeal from one court to another.
3. *Appellee - The party in a case against whom an appeal is taken; that is, the party who has an interest adverse to setting aside or reversing the judgment.
4. “Date of Entry” - (as applies to appeals in the U. S. Bankruptcy Court) Refers to the date the order, judgment, or decree is entered on the court docket. (A ‘docket sheet’ is maintained by the Court Clerk’s Office on every bankruptcy case and adversary proceeding, and contains a brief description of all activities in each case.) **See Fed. R. Bankr. P. 5003**
5. *Decree - The judgment of a court of equity or chancery, answering for most purposes to the judgment of a court of law.
6. *Judgment - The official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination.

(Fed. R. Bankr. P. 9021. Entry of Judgment.
“... Every judgment entered in an adversary proceeding or contested matter shall be set forth on a separate document. A judgment is effective when entered as provided in Rule 5003...”)
7. *Order -
 - (a) FINAL ORDER - One which either terminates the action itself, or finally decides some matter litigated by the parties, or operates to divest some right; or one which completely disposes of the subject-matter and the rights of the parties.
 - (b) INTERLOCUTORY ORDER - An order which decides not the cause, but only settles some intervening matter relating to it or affords some temporary relief.
8. *Transcript - An official copy of the record of proceedings in a trial or hearing. Word-for-word typing of everything that was said “on the record” during the trial. **(Please see Page 3, #3.)**

*** Derived from Black’s Law Dictionary**

1. **Appeal as of Right** - An appeal from a final judgment, order, or decree shall be taken by filing

a notice of appeal with the Clerk of the Bankruptcy Court. Said notice of appeal must conform substantially with Official Form 17 (copy of which is attached hereto), contain: (1) the names of all parties to the judgment, order, or decree appealed from, (2) the names, addresses and telephone numbers of their respective attorneys, (3) be accompanied by the prescribed fee. **(Fed. R. Bankr. P. 8001(a))** For filing a separate or joint notice of appeal from a final judgment of a bankruptcy judge, \$105 shall be paid to the Bankruptcy Court Clerk by the appellant or petitioner. (See **28 USC § 1930(c)** and **Appendix to 28 USC § 1930 (16)**) **The notice of appeal shall be filed within 10 days of the date of entry of the judgment, order, or decree appealed from.** (Fed. R. Bankr. P. 8002(a))

2. Within 10 days of the filing of a Notice of Appeal, the appellant shall file with the Clerk of the Bankruptcy Court a designation of the items to be included in the record on appeal and a statement of the issues to be presented and serve a copy of these documents on the appellee. **(Fed. R. Bankr. P. 8006)** The designation of record must expressly identify the specific items, document by document, to be included in the record on appeal. Vague descriptions or catch-all designations of the items such as “all bankruptcy files” or “the entire case and/or proceeding record” are not acceptable. Likewise, the statement of issues must be specific and concise. **(L.B.R. 8006-1(a))**

3. With regard to any designated record which includes a transcript of any proceeding or a part thereof, the filing party shall, immediately after filing the designation, file with the Clerk of the Bankruptcy Court a written request for the transcript and make satisfactory arrangements for payment of its cost. **(Fed. R. Bankr. P. 8006)** A “Transcript Order” form must be used and may be obtained from the Electronic Court Recording Officers; all payment arrangements are made through this department as well. **Please call for details: Jackson Division - 901-421-9315.**

Memphis Division - Courtroom of Chief Judge David S. Kennedy - 901-328-3576
Courtroom of Judge William Houston Brown - 901-328-3574
Courtroom of Judge Jennie D. Latta - 901-328-3575

4. Any party filing a designation of items shall, at the time of designation, provide to the Clerk of the Bankruptcy Court 2 copies each of the designated items, with the exception of transcripts (the original transcript to be filed with this office and one copy provided for transmission to the United States District Court.) If the filing party would prefer that the Bankruptcy Court Clerk’s Office provide the necessary copies, copies will be made at a charge of \$.50 per page. Payment must be received in advance, by cashier’s check, money order, or business check; we cannot accept debtor’s, or personal, checks. **To make arrangements with regard to copies, call the Appeals Clerk at: Memphis Division - 901-328-3503; Jackson Division - 901-421-9309.** If a designated item is not on file with this court, 2 copies of said item **MUST** be provided for inclusion in the record on appeal.

5. Failure to submit the designation of record or statement of issues within the time frame listed above may result in the dismissal of the appeal by the United States District Court. (Fed. R. Bankr. P. 8001)

Failure to specifically identify the items to be included in the designation of record, failure to order and/or pay for transcripts, and failure to supply copies or pay for copies supplied by the Clerk may result in the issuance of a “Deficiency Notice Regarding Appeals” which will delay the processing of the appeal. Failure to submit the items as required by said deficiency notice will result in the transmittal of the appeal to the Clerk of the United States District Court for disposition and possible dismissal by the United States District Court.

6. Within 10 days after service of the appellant’s statement of the issues to be presented, the appellee

may file with the Clerk of the Bankruptcy Court a designation of additional items to be included in the record on appeal and serve a copy of the designation on the appellant. **(Fed. R. Bankr. P. 8006)** **Failure to specifically identify the items to be included in the designation of record, failure to order and/or pay for transcripts, and failure to supply copies or pay for copies supplied by the Clerk may result in the issuance of a “Deficiency Notice Regarding Appeals” which will delay the processing of the appeal. Failure to submit the items as required by said deficiency notice will result in the transmittal of the designation to the Clerk of the United States District Court for disposition.**

CROSS APPEALS

7. Pursuant to **Fed. R. Bankr. P. 8002 (a)**, any other party may file a notice of appeal within 10 days of the date on which the first notice of appeal was filed. A notice of appeal filed within the additional 10 day period by an appellee is a cross appeal. For filing a separate or joint notice of appeal, \$105 shall be paid to the clerk of the court by the appellant or petitioner. **(28 USC § 1930(c) and Appendix to 28 USC § 1930 (22))** Within 10 days after the service of the appellant’s statement, the cross appellant shall file and serve a statement of the issues to be presented on the cross appeal and a designation of additional items to be included in the record. A cross appellee may, within 10 days of service of the cross appellant’s statement, file and serve on the cross appellant a designation of additional items to be included in the record. **(Fed. R. Bankr. P. 8006)** The rules listed above with regard to the designation of record, transcripts, or copies are applicable to cross appeals as well.

APPEAL BY LEAVE

8. An appeal from an interlocutory (interim) judgment, order, or decree shall be taken by filing (1) a notice of appeal as described in paragraph 1 above, (2) a motion for leave to appeal, and (3) proof of service in accordance with Fed. R. Bankr. P. 8008 (copy of which is attached hereto.) **(Fed. R. Bankr. P. 8001 (b) Pursuant to Fed. R. Bankr. P. 8003 (a)**, the motion for leave to appeal shall contain: (1) a statement of the facts necessary to an understanding of the questions to be presented by the appeal; (2) a statement of those questions and of the relief sought; (3) a statement of the reasons why an appeal should be granted, and (4) a copy of the judgment, order, or decree complained of and of any opinion or memorandum relating thereto. **Within 10 days after service of the motion an adverse party may file with the Clerk of the Bankruptcy Court an answer in opposition.** Upon the filing of ANY separate or joint notice of appeal, Five (\$5) Dollars shall be paid to the clerk of the court by the appellant or petitioner. **(28 USC § 1930(c) Please note, the \$100 filing fee pursuant to Appendix to 28 USC § 1930 (16) is NOT applicable to an appeal from an interlocutory judgment.**

9. If an order is entered granting leave to appeal, pick up with the procedures as outlined in paragraph 2, et seq. Designation of record and statement of issues on appeal should be filed within 10 days of entry of the order granting leave to appeal. **(Fed. R. Bankr. P. 8006)**

**JED G. WEINTRAUB,
CLERK OF COURT**

Rule 8001. Manner of Taking Appeal; Voluntary Dismissal.

(a) Appeal as of Right; How Taken. An appeal from a ~~final~~ judgment, order, or decree of a bankruptcy judge to a district court or bankruptcy appellate panel *as permitted by 28 U.S.C. § 158(a)(1) or (a)(2)* shall be taken by filing a notice of appeal with the clerk within the time allowed by Rule 8002. ~~An appellant's failure~~ Failure of an appellant to take any step other than ~~the~~ timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal. The notice of appeal shall (1) conform substantially to the appropriate Official Form, (2) ~~shall~~ contain the names of all parties to the judgment, order, or decree appealed from and the names, addresses and telephone numbers of their respective attorneys, and (3) be accompanied by the prescribed fee. Each appellant shall file a sufficient number of copies of the notice of appeal to enable the clerk to comply promptly with Rule 8004.

(b) Appeal by Leave; How Taken. An appeal from an interlocutory judgment, order or decree of a bankruptcy judge as permitted by 28 USC § 158(a)(3) shall be taken by filing a notice of appeal, as prescribed in subdivision (a) of this rule, accompanied by a motion for leave to appeal prepared in accordance with Rule 8003 and with proof of service in accordance with Rule 8008.

(c) Voluntary Dismissal.

(1) Before Docketing. If an appeal has not been docketed, the appeal may be dismissed by the bankruptcy judge on the filing of a stipulation for dismissal signed by all the parties, or on motion and notice by the appellant.

(2) After Docketing. If an appeal has been docketed and the parties to the appeal sign and file with the clerk of the district court or the clerk of the bankruptcy appellate panel an agreement that the appeal be dismissed and pay any court costs or fees that may be due, the clerk of the district court or the clerk of the bankruptcy appellate panel shall enter an order dismissing the appeal. An appeal may also be dismissed on motion of the appellant on terms and conditions fixed by the district court or bankruptcy appellate panel.

(d) [Abrogated]

(e) *ELECTION TO HAVE APPEAL HEARD BY DISTRICT COURT INSTEAD OF BANKRUPTCY APPELLATE PANEL* ~~Consent to Appeal to Bankruptcy Appellate Panel.~~ Unless otherwise provided by a rule promulgated pursuant to Rule 8018, consent to have an appeal heard by a bankruptcy appellate panel may be given in a separate statement of consent executed by a party or contained in the notice of appeal or cross appeal. ~~The statement of consent shall be filed before the transmittal of the record pursuant to Rule 8007(b) or within 30 days of the filing of the notice of appeal, whichever is later.~~ *An election to have an appeal heard by the district court under 28 U.S.C. § 158(c)(1) may be made only by a statement of election contained in a separate writing filed within the time prescribed by 28 U.S.C. § 158(c)(1).*¹

¹ The effective dates of the amendments to Rule 8001 is December 1, 1997.

Form 17. Notice of Appeal under 28 U.S.C. § 158(a) or (b) From a Judgment, Order, or Decree of a Bankruptcy Judge.

Form B17 (Official Form 17)
(9/97)

**Form 17. NOTICE OF APPEAL UNDER 28 U.S.C. § 158(a) OR (b)
FROM A JUDGMENT, ORDER, OR DECREE OF A
BANKRUPTCY JUDGE**

[Caption as in Form 16A, 16B, or 16D, as appropriate]

NOTICE OF APPEAL

_____, the plaintiff [or defendant or other party] appeals under 28 U.S.C. § 158(a) or (b) from the judgment, order, or decree of the bankruptcy judge (describe) entered in this adversary proceeding (*or other proceeding, describe type*) on the ____ day of _____, _____.(year)

The names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys are as follows:

Dated: _____

Signed: _____
Attorney for Appellant (or Appellant, if not represented by an Attorney)

Attorney Name: _____

Address: _____

Telephone No. _____

If a Bankruptcy Appellate Panel Service is authorized to hear this appeal, each party has a right to have the appeal heard by the district court. The appellant may exercise this right only by filing a separate statement of election at the time of filing of this notice of appeal. Any other party may elect, within the time provided in 28 U.S.C. § 158(c), to have the appeal heard by the district court.

Rule 8002. Time for Filing Notice of Appeal.

(a) Ten-Day Period. The notice of appeal shall be filed with the clerk within 10 days of the date of the entry of the judgment, order, or decree appealed from. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 10 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires. A notice of appeal filed after the announcement of a decision or order but before entry of the judgment, order, or decree shall be treated as filed after such entry and on the day thereof. If a notice of appeal is mistakenly filed with the district court or the bankruptcy appellate panel, the clerk of the district court or the clerk of the bankruptcy appellate panel shall note thereon the date on which it was received and transmit it to the clerk and it shall be deemed filed with the clerk on the date so noted.

(b) Effect of Motion on Time for Appeal. If any party makes a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion: (1) to amend or make additional findings of fact under Rule 7052, whether or not granting the motion would alter the judgment (2) to alter or amend the judgment under Rule 9023; (3) for a new trial under Rule 9023; or (4) for relief under Rule 9024 if the motion is filed no later than 10 days after the entry of judgment. A notice of appeal filed after announcement or entry of the judgment, order, or decree but before disposition of any of the above motions is ineffective to appeal from the judgment, order, or decree, or part thereof, specified in the notice of appeal, until the entry of the order disposing of the last such motion outstanding. Appellate review of an order disposing of any of the above motions requires the party, in compliance with Rule 8001, to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment, order, or decree shall file a notice, or an amended notice, or appeal within the time prescribed by this Rule 8002 measured from the entry of the order disposing of the last such motion outstanding. No additional fees will be required for filing an amended notice.

(c) Extension of Time for Appeal.

(1) The bankruptcy judge may extend the time for filing the notice of appeal by any party ~~for a period not to exceed 20 days from the expiration of the time otherwise prescribed by this rule., unless the judgment, order, or decree appealed from:~~

(A) grants relief from an automatic stay under § 362, § 922, § 1201, or § 1301;

(B) authorizes the sale or lease of property or the use of cash collateral under § 363;

(C) authorizes the obtaining of credit under § 364;

(D) authorizes the assumption or assignment of an executory contract or unexpired lease under § 365;

(E) approves a disclosure statement under § 1125; or

(F) confirms a plan under § 943, § 1225, or § 1325 of the Code.

(2) A request to extend the time for filing a notice of appeal must be made by written motion filed before the time for filing a notice of appeal has expired, except that such a motion filed not later ~~request made no more~~ than 20 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect ~~if the judgment or order appealed from does not authorize the sale of any property or the obtaining of credit or the incurring of debt under § 364 of the Code, or is not a judgment or order approving a disclosure statement, confirming a plan, dismissing a case, or converting the case to a case under another chapter of the Code.~~ An extension of time for filing a notice of appeal may not exceed 20 days from the expiration of the time for filing a notice of appeal otherwise prescribed by this rule or 10 days from the date of entry of the order granting the motion, whichever is later.¹

¹ The amendment to Rule 8002 is effective December 1, 1997.

Rule 8003. Leave to Appeal.

(a) Content of Motion; Answer. A motion for leave to appeal under 28 U.S.C. § 158(a) shall contain: (1) a statement of the facts necessary to an understanding of the questions to be presented by the appeal; (2) a statement of those questions and of the relief sought; (3) a statement of the reasons why an appeal should be granted; and (4) a copy of the judgment, order, or decree complained of and of any opinion or memorandum relating thereto. Within 10 days after service of the motion an adverse party may file with the clerk an answer in opposition.

(b) Transmittal; Determination of Motion. The clerk shall transmit the notice of appeal, the motion for leave to appeal and any answer thereto to the clerk of the district court or the clerk of the bankruptcy appellate panel as soon as all parties have filed answers or the time for filing an answer has expired. The motion and answer shall be submitted without oral argument unless otherwise ordered.

(c) Appeal Improperly Taken Regarded as a Motion for Leave to Appeal. If a required motion for leave to appeal is not filed, but a notice of appeal is timely filed, the district court or bankruptcy appellate panel may grant leave to appeal or direct that a motion for leave to appeal be filed. The district court or the bankruptcy appellate panel may also deny leave to appeal but in so doing shall consider the notice of appeal as a motion for leave to appeal. Unless an order directing that a motion for leave to appeal be filed provides otherwise, the motion shall be filed within 10 days of entry of the order.

Rule 8006. Record and Issues on Appeal.

Within 10 days after filing the notice of appeal as provided by Rule 8001(a), entry of an order granting leave to appeal, or entry of an order disposing of the last timely motion outstanding of a type specified in Rule 8002(b), whichever is later, the appellant shall file with the clerk and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented. Within 10 days after the service of the appellant's statement the appellee may file and serve on the appellant a designation of additional items to be included in the record on appeal and, if the appellee has filed a cross appeal, the appellee as cross appellant shall file and serve a statement of the issues to be presented on the cross appeal and a designation of additional items to be included in the record. A cross appellee may, within 10 days of service of the cross appellant's statement of issues file and serve on the cross appellant a designation of additional items to be included in the record. The record on appeal shall include the items so designated by the parties, the notice of appeal, the judgment, order, or decree appealed from, and any opinion, findings of fact, and conclusions of law of the court. Any party filing a designation of the items to be included in the record shall provide to the clerk a copy of the items designated or, if the party fails to provide the copy, the clerk shall prepare the copy at the party's expense. If the record designated by any party includes a transcript of any proceeding or a part thereof, the party shall, immediately after filing the designation, deliver to the reporter and file with the clerk a written request for the transcript and make satisfactory arrangements for payment of its cost. All parties shall take any other action necessary to enable the clerk to assemble and transmit the record.

Rule 8008. Filing and Service.

(a) Filing. Papers required or permitted to be filed with the clerk of the district court or the clerk of the bankruptcy appellate panel may be filed by mail addressed to the clerk, but filing is not timely unless the papers are received by the clerk within the time fixed for filing, except that briefs are deemed filed on the day of mailing. An original and one copy of all papers shall be filed when an appeal is to the district court; an original and three copies shall be filed when an appeal is to a bankruptcy appellate panel. The district court or bankruptcy appellate panel may require that additional copies be furnished. Rule 5005(a)(2) applies to papers filed with the clerk of the district court or the clerk of the bankruptcy appellate panel if filing by electronic means is authorized by local rule promulgated pursuant to Rule 8018.

(b) Service of All Papers Required. Copies of all papers filed by any party and not required by these rules to be served by the clerk of the district court or the clerk of the bankruptcy appellate panel shall, at or before the time of filing, be served by the party or a person acting for the party on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel.

(c) Manner of Service. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) Proof of Service. Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. The clerk of the district court or the clerk of the bankruptcy appellate panel may permit papers to be filed without acknowledgment or proof of service but shall require the acknowledgment or proof of service to be filed promptly thereafter.

28 USC § 1930

§ 1930. Bankruptcy fees.

(c) Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or a writ of certiorari \$5 shall be paid to the clerk of the court, by the appellant or petitioner.

Appendix to 28 USC § 1930

Bankruptcy Court Fee Schedule¹

(16) For docketing a proceeding on appeal or review from a final judgment of a bankruptcy judge pursuant to 28 USC § 158(a) and (b), \$100. A separate fee shall be paid by each party filing a notice of appeal in the bankruptcy court, but parties filing a joint notice of appeal in the bankruptcy court are required to pay only one fee.

Appendix to 28 USC § 1930

Bankruptcy Court Fee Schedule

(22) For docketing a cross appeal from a bankruptcy court determination, \$100.

L.B.R. 8006-1

DESIGNATION OF RECORD

(a) When the appellant and appellee file the FED. R. BANKR. P. 8006 designations of the items to be included in the record on appeal and statements of the issues to be presented, such designations of the record and statements of the issues shall expressly identify the specific items, document by document, to be included in the record on appeal and specific issues to be presented. Moreover, general, catch-all designations of the items to be included in the record on appeal such as “all bankruptcy files,” “the entire case and/or proceeding record” or similar phrase and general, vague, non-specific statements of the issues are not acceptable and shall result in the record on appeal being considered incomplete. Only that part of the record necessary for the appeal should be designated.

(b) All parties to the appeal shall strictly comply with the foregoing so as to enable the Clerk to promptly assemble and transmit the complete record on appeal for an effective and efficient review by the District Court. Failure of any party to comply with the foregoing shall be ground for such action as the Bankruptcy Court or District Court deems appropriate, which may include ultimate dismissal of the appeal and/or cross appeal by the District Court.