

How Do You Appeal a Bankruptcy Decision?

By Camille J. Iurillo and Gina M. Pellegrino

The following is a summary of the procedure for filing an appeal from bankruptcy court to the district court. This procedure is governed by Rules 8001 through 8020 of the Federal Rules of Bankruptcy Procedure (hereinafter referred to as “FRBP”). Thereafter, if the appellant appeals further to the court of appeals, the Federal Rules of Appellate Procedure apply.

In order to appeal a final judgment, order or decree of a bankruptcy court to a district court, a notice of appeal must be filed with the clerk of the bankruptcy court (along with an appeals cover sheet obtained from the clerk) within 10 days of the date of the entry of the final judgment, order or decree that is being appealed. *See*, Fed. R. Bankr. P. 8001(a) and 8002(a). It is important to note that the notice of appeal must be filed with the clerk of the bankruptcy court rather than with the clerk of the district court. An appeal may not be taken later if a timely notice of appeal is not filed. In addition, a notice of appeal that is filed prior to the entry of the judgment, order or decree sought to be appealed is ineffective. *See*, Fed. R. Bankr. P. 8002(b). Rule 8001(a) of the FRBP sets forth specific guidelines for the form and information to be contained in the notice of appeal.

Alternatively, in order to appeal an interlocutory judgment, order or decree of a bankruptcy court to a district court, a notice of appeal must be filed with the clerk of the bankruptcy court, as set forth above, along with a motion for leave to appeal. Fed. R. Bankr. P. 8001(b). Rule 8003(a) of the FRBP sets forth the specific information to be included in the motion for leave to appeal. The adverse party then has 10 days after service of this motion to file an answer in opposition with the clerk of the bankruptcy court.

The clerk of the bankruptcy court then transmits the notice of appeal (and any motion for leave to appeal as well as any answer, if applicable) to the clerk of the district court. Fed. R. Bankr. P. 8003(b). The clerk of the bankruptcy court also gives notice of this filing by mailing a copy of the notice of appeal to each party’s attorney. Fed. R. Bankr. P. 8004.

After the notice of appeal is filed, the appellant has 10 days to file with the clerk of the bankruptcy court and to serve on the appellee a list of items to be included in the record on appeal as well as a statement of the issues to be presented on appeal. *See*, Fed. R. Bankr. P. 8006. Once this is served on the appellee, the appellee has 10 days to file and serve on the appellant a list of additional items to be included in the record on appeal. Rule 8006 of the FRBP sets forth the specific information to be included in the record on appeal. When the record on appeal is complete, the clerk of the bankruptcy court transmits a copy of the record on appeal to the clerk of the district court. Upon receipt, the clerk of the district court enters the appeal in the docket and gives notice to all parties. *See*, Fed. R. Bankr. P. 8007(b).

Once the appeal is on the docket, the appellant must serve and file a brief within 15 days. Rule 8010 of the FRBP sets forth the format and information to be contained in such a brief, including section headings and page limitations. After service of the appellant’s brief, the appellee has 15 days to serve and file a brief in response to the appellant’s brief. Once the

appellee's response brief is served, the appellant has 10 days to serve and file a reply brief to the appellee's response brief. *See*, Fed. R. Bankr. P. 8009(a).

Oral argument is generally allowed in all cases, unless the district court unanimously determines after reviewing the briefs and record that oral argument is not needed. However, if the appeal is frivolous, oral argument will not be allowed. *See*, Fed. R. Bankr. P. 8012. Moreover, if the appeal is frivolous, the district court may award just damages and single or double costs to the appellee. *See*, Fed. R. Bankr. P. 8020.

On appeal, the district court has the authority to affirm, modify or reverse a bankruptcy court's judgment, order or decree. Alternatively, the district court can remand with instructions for further proceedings. Fed. R. Bankr. P. 8013. Generally speaking, the losing party pays the costs on appeal, unless otherwise agreed to by the parties or ordered by the district court. *See*, Fed. R. Bankr. P. 8014. After the judgment is entered by the district court on the appeal, a motion for rehearing may be filed within 10 days. Fed. R. Bankr. P. 8015.

In conclusion, the procedure for filing an appeal from bankruptcy court to the district court is lengthy and complicated. The most important tip is to be aware of the numerous filing deadlines so that your appeal does not get dismissed for being untimely.

Iurillo & Associates, P.A., located in downtown St. Petersburg, is comprised of **Camille J. Iurillo**, Shareholder, **Gina M. Pellegrino**, Associate, and **Sabrina C. Beavens**, as Of Counsel. **Ms. Iurillo** has been active in the St. Petersburg Bar Association for several years, including her current position as President Elect. In addition, she is a member of the Board of Directors of the St. Petersburg Bar Foundation and the Chair of The Florida Bar's Practice Management and Development Section. **Ms. Pellegrino** recently joined the Firm and is a new member of the St. Petersburg Bar Association.

The primary areas of practice of **Iurillo & Associates, P.A.** are Commercial and Bankruptcy Litigation and Debtors'/Creditors' Rights.