

U.S. BANKRUPTCY APPELLATE PANEL

Tips on Navigating the
Appeals Process

Notice of Appeal

- Check for jurisdiction –
Is the order a final, appealable order?
- File in bankruptcy court
- 14 days from entry of judgment
- Pay \$298 fee to bankruptcy court

DISTRICT COURT ELECTION

Current Rule

- District Court Election must be a **separate document** from the Notice of Appeal
- Appellant's Election must be filed **with** the Notice of Appeal

New Rule

- The Notice of Appeal and Statement of Election shall be filed in a combined document.
- New Official Form 17A.

Why choose the BAP?

- Decision by panel of 3 bankruptcy judges who are experts in their field.
- 28.5% reversed/remanded last five years
- Quick turn-around on your appeal:
 - Average 6.2 months w/oral argument
 - Average 4 months w/o oral argument

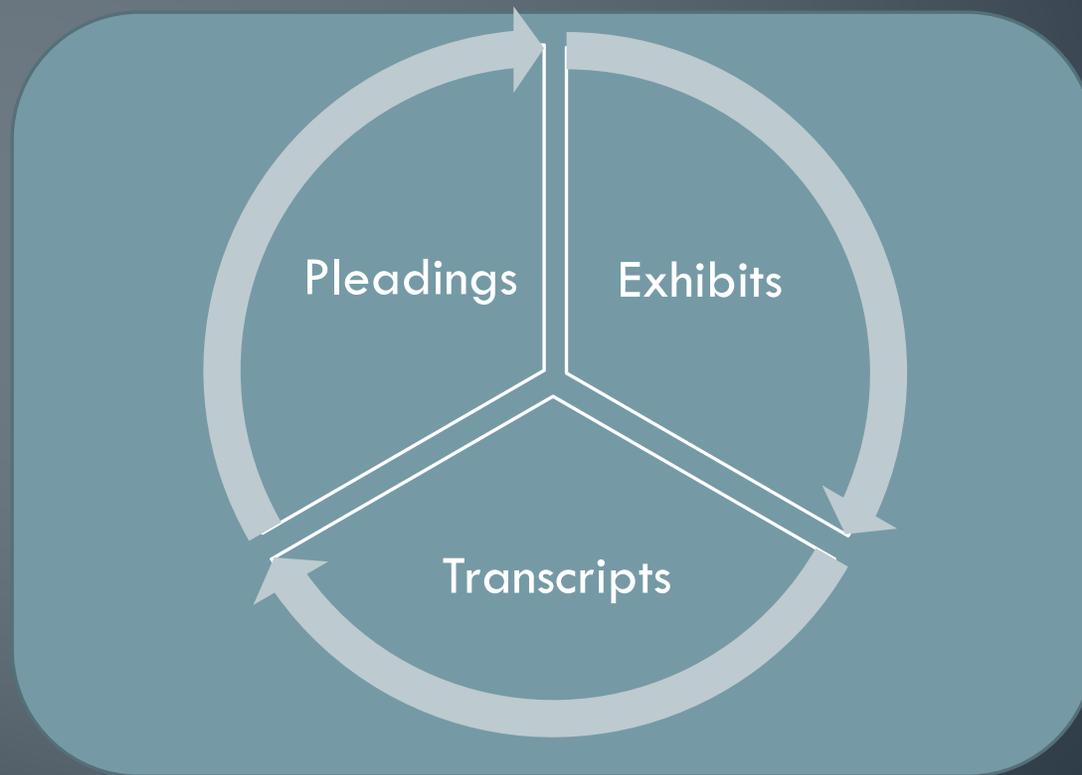
MOTIONS

- Motions ruled on by the clerk's office
 - Procedural in nature
 - May enter an order without waiting for a response
- Motions ruled on by a three-judge panel
 - Substantive in nature
 - 7 days for response
 - Submitted to the court without a hearing

Motion for Stay

- Request for a stay normally should be presented to the bankruptcy judge first.
- If filed directly with the BAP, a motion for stay must contain an explanation as to why relief was not first sought from the bankruptcy court.
- If the motion is of an emergency nature, call the clerk's office and let them know you are filing it. The heading should state it is an emergency.

The Record on Appeal



The Record on Appeal

- PLEADINGS

- File a Designation of Record which lists the pleadings being relied upon, along with their corresponding bankruptcy court docket number
- File the Designation of Record with the BAP.
 - Bankruptcy court will not send paper copies of pleadings.
 - BAP judges will download designated documents.
- Designation is done in lieu of appendix. It may be filed separately or it may be attached to the brief.

The Record on Appeal

- EXHIBITS

NEW LOCAL RULE 8006A:

Parties must designate any exhibits received into evidence in the bankruptcy court to be considered on appeal.

The Record on Appeal

**Exhibits appearing
on the
bankruptcy docket**

Designate these exhibits
by bankruptcy court
docket number

**Exhibits not appearing on
the
bankruptcy docket**

File these exhibits
electronically on the
BAP'S docket via cm/ecf

Record on Appeal

- TRANSCRIPTS

- **Must** order from bankruptcy court; preparation of the transcript cannot be outsourced.
- Once prepared, bankruptcy court will transmit the transcript to the BAP. The BAP **will not** accept a transcript from any other source.

The Record on Appeal

The burden of presenting a proper record to the court is on the appellant.

The failure to provide an adequate record may result in affirmance when review of the issue is dependent on the record.

Briefs

- Must be submitted thru ecf by midnight of the due date.
Do not send in paper copies.
- The clerk will review and, if there are no deficiencies, file the brief.
- Time for filing subsequent brief runs from filing, not submission, of the previous brief.
- References to the Bankruptcy Docket –
 - Indicate the exact docket entry where the cited document can be found, or add a hyperlink to the document.

Submission

- Submission With Oral Argument
 - Counsel should alert the clerk's office of potential scheduling conflicts for hearings.
 - Location – counsel may be asked to travel to a nearby city or appear via video-conference
 - Frequency – dependent on case size
 - Typically, 15 minutes allocated per side

Submission

- Submission Without Oral Argument

Case may be submitted on the briefs and record, without oral argument, if

a) both parties waive oral argument

or

b) the panel determines after examination of the briefs and record that oral argument is not needed

Case is submitted, on average, 25 days sooner than with argument.

Decision

- 60 days from submission
 - Average is 32 days
- Opinions posted on pacer by 10:15 each morning
- Electronic notice generally goes out to parties before 10:00 a.m.

Appealing to the Circuit Court

- File Notice of Appeal in the BAP case.
- Fee of \$505 must be mailed to BAP. Make check payable to “U.S. Court of Appeals”.
- 30 days from entry of judgment; 60 days if U.S. is a party.
- Transcripts will be forwarded to the circuit. All other record materials should be put in an appendix prepared by the parties.
- Average reversal rate over last three years is 7%.