

LOCAL RULES OF BANKRUPTCY APPEAL PROCEDURE⁸

⁸ The Local Rules of Bankruptcy Appeal Procedure may be cited as “LRBankr”.

9th Cir. BAP R. 8001(a)-1. Notice of Appeal

LRBankr 8001-1

NOTICE OF APPEAL

Order Being Appealed. The appellant shall attach to the notice of appeal filed in bankruptcy court a copy of the entered judgment, order or decree from which the appeal was taken. If a 28 U.S.C. Sec. 158(c) election to have the appeal heard by the district court is filed by the appellant at the time of filing the notice of appeal, the bankruptcy court clerk shall transmit the appeal to the district court clerk. If such an election is filed by any other party with the clerk of the bankruptcy appellate panel within thirty days after service of the notice of appeal, the clerk of the bankruptcy appellate panel shall transfer the appeal to the district court. If the notice of appeal is filed before entry of the order being appealed, it is the appellant's duty to transmit to the district court clerk a copy of the judgment or order immediately upon entry.

Committee Notes: Generally, the Local Rules of Bankruptcy Appeal Procedure track the content and the numbering of the local rules of the Ninth Circuit Bankruptcy Appellate Panel.

9th Cir. BAP R. 8001(e)-1. Election to Transfer Appeal to District Court

LRBankr 8001-2

ELECTION PROCEDURE FOR MOTION FOR LEAVE TO APPEAL

If the appellant moves for leave to appeal pursuant to FRBP 8003 and fails to file a separate notice of appeal concurrently with filing the motion for leave, the motion for leave will be treated as if it were a notice of appeal for purposes of calculating the time period for filing an election to transfer the appeal to the district court.

9th Cir. BAP R. 8006-1. Transcripts

LRBankr 8006-1

TRANSCRIPTS

Any party submitting excerpts of the record shall include all transcripts necessary for adequate review in light of the standard of review applicable to the issues before the district court. The district court is required to consider only those portions of the transcript included in the excerpts of the record. If findings of fact and conclusions of law were made orally on the record, a transcript of those findings is mandatory.

9th Cir. BAP R. 8007(b)-1. Docketing Appeal and Appellate Record

LRBankr 8007-1

DOCKETING APPEAL AND APPELLATE RECORD

As soon as the statement of issues, designation of record, and any designated transcripts are filed with the bankruptcy court, the bankruptcy court clerk, upon exercise of the 28 U.S.C. Sec. 158(c) election to have the appeal heard by the district court, shall transmit to the district court clerk a certificate that the record is complete and shall notify the parties of that transmittal unless the certificate has been filed with the bankruptcy appellate panel. The date the bankruptcy court clerk transmits the certificate that the record is complete shall constitute the date of entry of the appeal on the docket of the district court. The bankruptcy court clerk shall retain the record. The district court clerk may request a copy of the record from the bankruptcy court clerk.

**9th Cir. BAP R. 8008(a)-1. Communications
(NO LOCAL RULE)**

**9th Cir. BAP R. 8008(a)-3. Fax Filing
(NO LOCAL RULE)**

9th Cir. BAP R. 8009(a)-1. Briefs; Number of Copies; Extensions of Time

LRBankr 8009-1

BRIEFS – TIME LIMITS AND NUMBER

(a) Scheduling Order. Upon entry of the appeal on the docket, the district court shall issue a scheduling order regarding submission of briefs. Parties shall file briefs within the time limits set forth in the scheduling order rather than the time limits set forth in FRBP 8009(a)(1), (2), and (3).

(b) Number. Upon the filing of a brief, a party shall also provide one paper copy for use by the District Judge to whom the case is assigned, bound separately from the excerpts of the record. At the direction of the district court, the parties may be required to provide additional copies.

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

(1) Requirements. A motion for extension of time to file a brief shall be filed within the time limit prescribed by these rules for the filing of such brief and shall be accompanied by a proof of service. The motion shall be supported by a declaration stating:

1. When the brief was initially due;
2. How many extensions of time, if any, have been granted;
3. Reasons why this extension is necessary;
4. The specific amount of time requested; and
5. The position of the opponent(s) with respect to the motion or why the moving party has been unable to obtain a statement of such position(s).

(2) Consequences. Appellant's failure to file a brief timely may result in the dismissal of the appeal. A brief received after the due date will not be accepted for filing unless it is accompanied by a motion for an extension of time and the motion is granted. The district court has no obligation to consider a late brief. Sanctions may be imposed, such as the waiver of oral argument, monetary sanctions or dismissal.

9th Cir. BAP R. 8009(b)-1. Appendix (Excerpts of the Record)

LRBankr 8009-2

BRIEFS AND EXCERPTS OF THE RECORD

(a) Number and Form. Upon the filing of any excerpts of the record, a party shall also provide one paper copy for use by the District Judge to whom the case is assigned, bound separately from the briefs. The copy shall be reproduced on white paper by any duplicating process capable of producing a clearly legible image and be bound with a white cover. The cover of the excerpts shall contain the caption information specified by LRBankr 8010-1(a).

(b) Organization of Appendix. Documents in the excerpts shall be divided by tabs in the paper copy provided for use by the Judge. The pages of the excerpts shall be continuously paginated. The excerpts shall contain a complete table of contents listing the documents and identifying both the tab and page number where each document is located. If the excerpts have more than one volume, the table of contents shall also identify the volume in which each document is located.

9th Cir. BAP R. 8010(a)-1. Form of Briefs and Certification Requirements

LRBankr 8010-1

BRIEFS – FORM AND CERTIFICATION REQUIREMENTS

(a) Form. Briefs shall comply with the form requirements of LRCiv 7.1 and shall contain the following cover information:

Name of Court;

Case numbers (District Court, Bankruptcy Court, and if applicable, adversary number(s));

Name of debtor;

Names of appellant(s) and appellee(s);

Title of document; and

Name, address, telephone number, email address, and bar number of counsel filing document.

(b) Certification as to Interested Parties. To enable the district judge to evaluate possible disqualification or recusal, all parties, other than governmental parties, shall attach to the inside back cover of their initial briefs, a list of all persons, associations of persons, firms, partnerships and corporations that have an interest in the outcome of the case. The certification should be in substantially the following form:

Certification Required by Local Bankruptcy Rule 8010-1(b)

[DISTRICT COURT CASE NUMBER, DEBTOR’S NAME]

The undersigned certifies that the following parties have an interest in the outcome of this appeal. These representations are made to enable the district judge to evaluate possible disqualification or recusal [list the names of all such parties and identify their connection and interest]:

Signed

Dated

(c) **Certification of Related Cases.** The appellant shall attach as the last page of each copy of the opening brief a statement of all known related cases and appeals before the United States Court of Appeals, the BAP, or the district court. Appellee’s answering brief shall contain appellee’s certification of related cases. A related case is defined as one which involves substantially the same litigants, substantially the same factual pattern or legal issues, or arises from a case previously heard by the district court. The certification should be in substantially the following form:

Certification Required by Local Bankruptcy Rule 8010-1(c)

[DISTRICT COURT NUMBER, DEBTOR’S NAME]

The undersigned certifies that the following are known related cases and appeals [list the case name, court and status of all related cases and appeals]:

Signed

Dated

Committee Notes: Rule 8010-1 tracks 9th Circuit BAP Rule 8010(a)-1, except that the form requirements of LRCiv 7.1 are adopted over the differing form requirements of the BAP Rule, and colored brief covers are not required.

9th Cir. BAP R. 8010(c)-1. Length of Briefs

LRBankr 8010-2

LENGTH OF BRIEFS

Except with leave of the district court, the appellant's and appellee's initial briefs may not exceed seventeen (17) pages, and reply briefs may not exceed eleven (11) pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations or similar materials.

Committee Notes: The page limits are those set by LRCiv 7.2(e) for civil motions generally and differ from those in the Ninth Circuit BAP.

9th Cir. BAP R. 8011(d)-1. Emergency Motions

LRBankr 8011-1

EMERGENCY MOTIONS

(a) Form and Number. An emergency motion must have a cover page bearing the legend “Emergency Motion” in large, bold type. Upon filing the motion, one paper copy must be provided for use by the District Judge to whom the case is assigned.

(b) Contents. The motion and supporting declaration(s) must set forth the facts showing the existence and nature of the alleged immediate and irreparable harm.

(c) Appendix. An emergency motion must be accompanied by an appendix containing: (1) a conformed copy of the notice of appeal, and (2) a copy of the entered judgment, order or decree from which the appeal was taken. If the emergency motion concerns a stay pending appeal, the appendix must also contain: (1) a conformed copy of the bankruptcy court’s order denying or granting the stay and any explanation by the bankruptcy court of its ruling, or a declaration explaining why such a copy is unavailable; and (2) copies of all documents regarding the stay filed in bankruptcy court.

(d) Service. The motion and appendix must be accompanied by a proof of service showing service on all parties.

**9th Cir. BAP R. 8011(e)-1. Delegation of Authority to Act on Motions
(NO LOCAL RULE)**

9th Cir. BAP R. 8012-1. Oral Argument

LRBankr 8012-1

ORAL ARGUMENT

Unless otherwise directed by the district court, a party desiring oral argument shall request it by placing “Oral Argument Requested” immediately below the title of the brief. If oral argument is granted, notice will be given in a manner directed by the district court.

9th Cir. BAP R. 8012-2. En Banc Hearing and Determination of Appeals
(NO LOCAL RULE)

9th Cir. BAP R. 8013-1. Disposition of Appeal
(NO LOCAL RULE)

9th Cir. BAP R. 8014-1. Costs

LRBankr 8014-1

COSTS

Costs under FRBP 8014 are taxed by filing a bill of costs with the bankruptcy court clerk.

9th Cir. BAP R. 8018(b)-1. Silence of Local Rules

LRBankr 8018-1

SILENCE OF LOCAL RULES OF BANKRUPTCY APPEAL PROCEDURE

In cases where these Local Rules of Bankruptcy Appeal Procedure and the FRBP are silent as to a particular matter of practice relating to a bankruptcy appeal, the District Court may apply the Rules of the United States Court of Appeals for the Ninth Circuit, the Federal Rules of Appellate Procedure and/or this Court's Local Rules of Civil Procedure including, but not limited to, the General Provisions, LRCiv 81-86, thereof.

9th Cir. BAP R. 8018-2. Citation to Rules

LRBankr 8018-2

CITATION TO LOCAL RULES OF BANKRUPTCY APPEAL PROCEDURE

Parties shall cite these Local Rules of Bankruptcy Appeal Procedure as:

“LRBankr”.

LRBankr 8019-1

SUSPENSION OF LOCAL RULES OF BANKRUPTCY APPEAL PROCEDURE

Upon application, or upon the district court's own motion, any judge of the district court may suspend any of these Local Rules of Bankruptcy Appeal Procedure for good cause shown.

9th Cir. BAP R. 8070-1. Dismissal for Failure to Prosecute

LRBankr 8020-1

DISMISSAL FOR FAILURE TO PROSECUTE

When an appellant fails to file an opening brief timely, or otherwise fails to comply with rules or orders regarding processing the appeal, the district court, after notice, may enter an order dismissing the appeal.

9th Cir. BAP R. 9001-1. Definitions
(NO LOCAL RULE)

9th Cir. BAP R. 9010-1. Attorneys-Duties, Withdrawal, Substitution
(NO LOCAL RULE)

9th Cir. BAP R. 9010-2. Pro Se Parties
(NO LOCAL RULE)

APPENDIX A. -- MOTIONS TIME CHART

CATEGORY ONE ALL MOTIONS (except Motions for Summary Judgment and Motions to Dismiss for Lack of Jurisdiction)

Authority Rule 6 of the Federal Rules of Criminal Procedure and Rules 7.2 and 7.3, Local Rules of Civil Procedure

Type of Motion	Response Time (to previous action)	Mailing Time	Notice Time
Motion and Memorandum by Moving Party	(Initiating Action)	3 days	37 days from filing of the Motion, then the following Monday
Responsive Memorandum	14 days	3 days	
Reply Memorandum	7 days	3 days	
Court Review Time	7 days		

CATEGORY TWO Motions for Summary Judgment and Motions to Dismiss for Lack of Jurisdiction

Authority Rule 6 of the Federal Rules of Criminal Procedure and Rules 12.1 and 56.1, Local Rules of Civil Procedure

Type of Motion	Response Time (to previous action)	Mailing Time	Notice Time
Motion, Memorandum and Statement of Facts	(Initiating Action)	3 days	68 days from filing of the Motion, then the following Monday
Responsive Memorandum	30 days	3 days	
Reply Memorandum	15 days	3 days	
Court Review Time	14 days		

APPENDIX B. -- U.S. DISTRICT COURT LEGAL HOLIDAYS

New Year's Day	January 1*
Martin Luther King Day	3rd Monday in January
Washington's Birthday	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4*
Labor Day	1st Monday in September
Columbus Day	2nd Monday in October
Veteran's Day	November 11*
Thanksgiving Day.....	4th Thursday in November
Christmas Day	December 25*

*In accordance with 5 U.S.C. § 6103, whenever a holiday occurs on Sunday, the following Monday is treated as a holiday and whenever a holiday occurs on Saturday, the Friday immediately before is treated as a legal holiday.

APPENDIX C. -- LRCiv 7.1 FORM***

1 (Attorney's name)†††
2 (Attorney's address)
3 State Bar No. 012345
4 (Attorney's facsimile number, if any)
5 (Attorney's e-mail address)
6 (Attorney's telephone number)

Attorney for Plaintiffs Doe

7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF ARIZONA

9 John Doe and Jane Doe, husband and wife,

No. CV-04-1-PHX-NVW

10 Plaintiffs,

11 v.

FIRST AMENDED COMPLAINT

12 ABC Corporation, a Delaware
13 corporation,

14 Defendant.

15
16 DATED this _____ day of _____, 20____.

17
18 _____
19 (Attorney's Name)
20 Attorney for Plaintiffs Doe†††
21

*** This form is intended for illustrative purposes only.

††† A proposed order must not contain any information identifying the party submitting the order.

‡‡‡ The name and title of the Judge assigned to the matter should be adapted accordingly when submitting a proposed order.