BANKRUPTCY BAR ASSOCIATION

For the District of Maryland

BANKRUPTCY APPEALS MANUAL

(Fourth Edition)

Bankruptcy Appeals in Maryland from the U. S. Bankruptcy Court to the U. S. District Court and Direct Appeals to the Fourth Circuit Court of Appeals

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Editor
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INTRODUCTION

This Manual is intended to assist attorneys and their clients with the process of taking appeals from the United States Bankruptcy Court for the District of Maryland (the "Bankruptcy Court") to the United States District Court for the District of Maryland (the "District Court"). In such matters, the District Court sits as the appellate court of first instance reviewing on appeal decisions of the Bankruptcy Court. Further appeals in bankruptcy matters may be taken under appropriate circumstances from the District Court to the United States Court of Appeals for the Fourth Circuit (the "Fourth Circuit"). In addition, pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "Bankruptcy Reform Act of 2005"), there is also a procedure for direct appeals of certain judgments, orders and decrees of the Bankruptcy Court to the Fourth Circuit. See 28 U.S.C. § 158(d).

Issues concerning when the District Court has jurisdiction over an appeal[1] and how to take an appeal from the District Court to the Fourth Circuit are beyond the scope of this Manual.

Anyone taking an appeal in a bankruptcy matter from the Bankruptcy Court to the District Court or directly to the Fourth Circuit should be familiar with

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[1] See generally 28 U.S.C. § 158(a).

Part VIII (Rules 8001 through 8028) of the Federal Rules of Bankruptcy Procedure. In addition, Local Rule 404 of the Rules of the United States District Court for the District of Maryland applies to appeals from the Bankruptcy Court to the District Court.

This Manual is intended as a guide to the procedures and practice of taking an appeal from the Bankruptcy Court to the District Court in Maryland. It is, however, not an exhaustive treatment of the subject, and attorneys should not use this Manual as a substitute for doing their own research and reviewing carefully all applicable statutes, rules and case law.

HOW AN APPEAL IS TAKEN

Because bankruptcy appellate panels have not been established in the Fourth Circuit, appeals from the Bankruptcy Court are taken to the District Court unless a direct appeal is sought to the Fourth Circuit. The party commencing the appeal is captioned "appellant" and the adversary "appellee."

COMMENCING THE APPELLATE PROCESS (Bankruptcy Rules 8002-8004)

A. APPEALS PURSUANT TO 28 U.S.C. § 158(a)(1) FROM FINAL JUDGMENTS, ORDERS AND DECREES OF THE BANKRUPTCY COURT.

Appeals as a matter of right may be taken from a final judgment, order or decree of a bankruptcy judge to

the District Court by filing a Notice of Appeal with the clerk of the Bankruptcy Court within the time prescribed. The Notice of Appeal shall conform substantially to the appropriate Official Form[2] and shall be accompanied by the judgment, order or decree, or part thereof, being appealed and by the prescribed fee.[3] If the Notice of Appeal is being filed electronically through the CM/ECF system, the fee must be paid by credit card as part of the filing process. If the Notice of Appeal is being filed in person at the clerk's office of the Bankruptcy Court, unless the party is exempt from electronic filing,[4] the Notice of Appeal shall be submitted on a disk, and as provided in Local Bankruptcy Rule 1006-1, the filing fee may be paid in cash or by cashier's check, certified check or negotiable money order payable to "Clerk, United States Bankruptcy Court," or if the Notice of Appeal is being filed by counsel, payment of the filing fee may be

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[2] See Official Form 417A (effective December 1, 2015), a copy of which is included as Appendix 1 hereto.

[3] As of the date of publication of this Manual, the filing fee for a bankruptcy appeal is $298.00. To check on the most current information on the filing fee required, consult the website of the U.S. Bankruptcy Court for the District of Maryland, www.mdb.uscourts.gov.

[4] Appellants who are representing themselves ("pro se"), other than those who are members of the Bar of the District Court, are exempt from the electronic filing requirements and should file their Notice of Appeal with the clerk of the Bankruptcy Court in paper format.

made by credit card. Payment at the clerk's office by an attorney's check will be accepted only if the check is drawn on the account of the attorney for the appellant or on the account of a law firm of which the attorney is a member, partner, associate or of counsel.

The party taking an appeal shall serve a copy of the Notice of Appeal on all other parties to the appeal. In addition, parties to an appeal who have been using the Bankruptcy Court CM/ECF system in the case in which the appeal is filed should also receive electronic notice of the filing of the Notice of Appeal. At the time of filing the Notice of Appeal, counsel for the appellant is requested to notify the clerk of the Bankruptcy Court if there are any related appeals pending or if there have been any prior appeals taken in the same or any related bankruptcy case. The bankruptcy clerk is required to serve the Notice of Appeal on counsel of record for each party to the appeal, excluding the appellant, and to transmit it to the United States trustee. If a party is proceeding pro se, the clerk must send the Notice of Appeal to the party's last known address. The clerk is required to note on each copy the date when the Notice of Appeal was filed. If requested to do so, the appellant must furnish the bankruptcy clerk with enough copies of the Notice of Appeal to enable the clerk to comply with the foregoing responsibilities.

Failure of an appellant to take any step other than timely filing of a Notice of Appeal does not affect the validity of the appeal, but is ground for such action as the District Court considers appropriate, including

dismissing the appeal. Failure of the bankruptcy clerk to take any required step does not affect the validity of the appeal.

When two or more parties are entitled to appeal from a judgment, order or decree of the Bankruptcy Court and their interests make joinder practicable, they may file a joint Notice of Appeal. Such parties may then proceed on appeal as a single appellant. When parties have separately filed timely Notices of Appeal, the District Court may join or consolidate the appeals.

The bankruptcy clerk is required to promptly transmit the Notice of Appeal to the clerk of the District Court. Upon receiving the Notice of Appeal, the clerk of the District Court is required to docket the appeal under the title of the bankruptcy case and the title of any adversary proceeding, and to identify the appellant, adding the appellant's name if necessary.

1. Time Prescribed

The general rule with respect to the time for filing an appeal is that a Notice of Appeal must be filed with the clerk of the Bankruptcy Court within 14 days after entry of the judgment, order or decree being appealed. As discussed below two exceptions apply to this rule, one with respect to a later date being applicable if certain motions are filed in the Bankruptcy Court with respect to an order or judgment from which an appeal is to be taken (see subsection 2 below) and two with respect to appeals by an inmate confined in an institution (see subsection 3

below).

A Notice of Appeal filed after the Bankruptcy Court announces a decision or order, but before entry of the judgment, order or decree, is treated as filed on the date of and after the entry. If one party files a timely Notice of Appeal, any other party may file a Notice of Appeal within 14 days after the date when the first notice was filed, or within the time otherwise allowed, whichever period ends later.

If a Notice of Appeal is mistakenly filed in the District Court or the Fourth Circuit, the clerk of that court is required to state on the notice the date on which it was received and transmit it to the clerk of the Bankruptcy Court. The Notice of Appeal is then considered filed in the Bankruptcy Court on the date so stated.[5]

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[5] The failure to file an appeal within the 14-day period set forth in Bankruptcy Rule 8002(a) may, except as specifically provided in Bankruptcy Rule 8002(b) and (d) (discussed in subsections 2 and 4 immediately following), be a jurisdictional defect barring appellate review by the District Court. See In re Silver Oak Homes, Ltd., 169 B.R. 349 (D. Md. 1994); In re Arnold, 305 B.R. 436 (D. Md.), aff'd, 84 Fed. Appx. 294, 2003 WL 23019243 (4th Cir. 2003). Similarly, an appellee's failure to file a timely notice of cross-appeal may be a jurisdictional defect barring appellate review by the

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2. Effect of Certain Motions on Time for Appeal

If a party timely files in the Bankruptcy Court a motion (A) to amend or make additional findings under Bankruptcy Rule 7052, whether or not granting the motion would alter the judgment, (B) to alter or amend the judgment under Bankruptcy Rule 9023, (C) for a new trial under Bankruptcy Rule 9023, or (D) for relief under Bankruptcy Rule 9024 if the motion is filed within 14 days after the judgment is entered, the time to file an appeal runs for all parties from the entry of the order disposing of the last remaining motion.[6]

If a party files a Notice of Appeal after the Bankruptcy Court announces or enters a judgment, order or decree, but before it disposes of any of the motions listed above, the Notice of Appeal becomes effective when the order disposing of the last such motion is entered. If a party intends to challenge an order disposing of any

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District Court of the issues sought to be raised by the cross-appeal. In re Blair, 301 B.R. 181, 184 (D.Md. 2003).

[6] It should be noted that the 14-day period for a motion seeking relief under Bankruptcy Rule 9024 is different than the time period in the applicable Federal Rule of Civil Procedure, Rule 60 F.R.Civ.P., incorporated by reference in Bankruptcy Rule 9024.

such motion, or the alteration or amendment of a judgment, order or decree upon such motion, the party must file a Notice of Appeal or an amended Notice of Appeal. Such notice or amended notice must comply with the Rules regarding notices of appeal and be timely filed, measuring the required time for filing from the entry of the order disposing of the last of the motions referred to in (A) through (D) above. No additional fee will be required to file an amended Notice of Appeal.

3. Appeals by an Inmate Confined in an Institution

If an inmate confined in an institution files a Notice of Appeal from a judgment, order or decree of the Bankruptcy Court, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If the institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid. If an inmate files the first Notice of Appeal from a judgment, order or decree of the Bankruptcy Court, the 14-day period for another party to file a Notice of Appeal runs from the date when the clerk of the Bankruptcy Court dockets the first notice.

4. Extending the Time to Appeal

Except as provided hereinafter, the Bankruptcy

Court may extend the time to file a Notice of Appeal upon a party's motion that is filed (A) within the time otherwise prescribed for timely filing a Notice of Appeal or (B) within 21 days after that time, if the party shows excusable neglect. As provided in Bankruptcy Rule 8002(d)(2), the Bankruptcy Court may not extend the time to file a Notice of Appeal if the judgment, order or decree appealed from (A) grants relief from an automatic stay under §§ 362, 922, 1201 or 1301 of the Bankruptcy Code; (B) authorizes the sale or lease of property or the use of cash collateral under § 363 of the Bankruptcy Code; (C) authorizes the obtaining of credit under § 364 of the Bankruptcy Code; (D) authorizes the assumption or assignment of an executory contract or unexpired lease under § 365 of the Bankruptcy Code; (E) approves a disclosure statement under § 1125 of the Bankruptcy Code; or (F) confirms a plan under §§ 943, 1129, 1225 or 1325 of the Bankruptcy Code. No extension of time may exceed 21 days after the time prescribed, or 14 days after the order granting the motion to extend time is entered, whichever is later.

B. APPEALS PURSUANT TO 28 U.S.C. § 158(a)(2) FROM INTERLOCUTORY ORDERS AND DECREES INCREASING OR REDUCING THE TIME PERIODS FOR A DEBTOR TO FILE A PLAN AND OBTAIN ACCEPTANCE OF THE PLAN.

An appeal as of right exists with respect to interlocutory orders and decrees issued by the Bankruptcy Court under § 1121(d) of the Bankruptcy

Code increasing or reducing the time periods referred to in § 1121(d) for filing a Chapter 11 plan and obtaining acceptance of the plan. An appeal from such order or decree should be filed within the time period and in accordance with the procedure in Section A above.

C. APPEALS PURSUANT TO 28 U.S.C. § 158 (a)(3) FROM OTHER INTERLOCUTORY ORDERS AND DECREES WITH LEAVE OF COURT.

In order to appeal from interlocutory orders and decrees other than those referred to in Section B above, leave of the District Court must be obtained. In addition to timely filing a Notice of Appeal (see Section A above), a motion for leave to appeal under 28 U.S.C. § 158(a)(3) should be filed with the clerk of the Bankruptcy Court. A filing fee of $5.00 shall be paid at the time of filing a motion for leave to appeal. The $293.00 balance of the filing fee shall be due and payable at such time as the District Court grants the motion for leave to appeal.[7]

The Notice of Appeal must include proof of service of the notice, unless the notice is served electronically using the Bankruptcy Court's transmission equipment.

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[7] The foregoing filing fees are those in effect as of the date of publication of this Manual. For the most current information, consult the website of the U.S. Bankruptcy Court for the District of Maryland, www.mdb.uscourts.gov.

The motion for leave to appeal must also be served on counsel to all parties to the appeal and, if a party is not represented by counsel, on the party itself. Although the motion for leave to appeal should be filed in the Bankruptcy Court, the District Court is the court which will decide the motion seeking leave to appeal.

A motion for leave to appeal must include (1) the facts necessary to understand the question presented, (2) the question itself, (3) the relief sought, (4) the reasons why leave to appeal should be granted, and (5) a copy of the interlocutory order or decree and any related opinion or memorandum. Within 14 days after service of the motion, a party may file with the clerk of the District Court a response in opposition or a cross-motion.[8]

The clerk of the Bankruptcy Court will transmit the Notice of Appeal, and the motion for leave to appeal to the clerk of the District Court.

As set forth in Local District Court Rule 404.5, the Bankruptcy Court shall, upon request of the District

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[8] For an instructive analysis of issues relating to motions for leave to appeal to the District Court, see In re Rood, 426 B.R. 538, 545-50 (D. Md. 2010); Law Offices of Mark Kotlarsky v. Neese, 2014 U.S. Dist. LEXIS 125308, 2014 WL 4467845 (D. Md. 2014); and Rehab at Work, Corp. v. Cohen, 2015 U.S. Dist. LEXIS 64347, 2015 WL 2376015 (D. Md. 2015).

Court, submit to the District Court a written certification stating whether, in its opinion, the interlocutory order involves a controlling question of law as to which there is substantial ground for difference of opinion and whether an immediate appeal of it may materially advance the ultimate termination of the case. The District Court shall thereafter determine whether to grant or deny the application for leave to appeal.[9] The motion and any response or cross-motion shall be submitted to the District Court without oral argument unless the District Court orders otherwise.

If an appellant timely files a Notice of Appeal but does not include a motion for leave to appeal with respect to an interlocutory order or decree, the District Court may order the appellant to file a motion for leave to appeal, or treat the Notice of Appeal as a motion for leave to appeal and either grant or deny it. If the District Court orders that a motion for leave to appeal be filed, the appellant must do so within 14 days after the order is entered, unless the order provides otherwise.

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[9] As set forth in Bankruptcy Rule 8004(e), if the Fourth Circuit authorizes a direct appeal of a judgment, order or decree of the Bankruptcy Court to the Fourth Circuit under 28 U.S.C. § 158(d)(2), the requirement for leave to appeal the underlying judgment, order or decree shall be deemed satisfied. If the Fourth Circuit does not authorize a direct appeal, then the question of whether to grant or deny leave to appeal will be decided by the District Court.

DIRECT APPEALS TO THE FOURTH CIRCUIT
(28 U.S.C. § 158(d)(2))
(Bankruptcy Rule 8006)

As part of the Bankruptcy Reform Act of 2005, a new procedure was added providing for appeals of certain judgments, orders and decrees of the Bankruptcy Court directly to the Fourth Circuit. 28 U.S.C. § 158(d) was amended to provide for such direct appeals upon certification by the Bankruptcy Court or the District Court (including certification requested by a majority of the appellants and a majority of the appellees), or upon certification by all appellants and appellees, and, in all such cases, authorization of the direct appeal by the Fourth Circuit. Procedures with respect to direct appeals to the Fourth Circuit are set forth in Bankruptcy Rule 8006.

A direct appeal is commenced like any other appeal by filing a timely Notice of Appeal pursuant to Bankruptcy Rule 8003 or Bankruptcy Rule 8004. The additional steps required to seek a direct appeal to the Fourth Circuit are seeking certification by the Bankruptcy Court or the District Court and obtaining approval of the direct appeal from the Fourth Circuit as set forth in 28 U.S.C. § 158(d)(2) and Bankruptcy Rule 8006. Although parties contemplating a direct appeal have 60 days to seek certification after entry of the judgment, order or decree subject to appeal, if any such party desires to have the Bankruptcy Court act on the request for certification, such party should act promptly, before the matter is deemed pending in the District

Court. See Bankruptcy Rule 8006(b). However, after the matter is deemed pending in the District Court, the District Court may request the Bankruptcy Court to make a recommendation to it regarding the requested certification.

As set forth in 28 U.S.C. § 158(d)(2), authorization for a direct appeal can be sought in three ways:

(1) certification by the Bankruptcy Court or the District Court, acting on its own motion or the request of a party to the judgment, order or decree appealed from, that –

(i) the judgment, order or decree involves a question of law as to which there is no controlling decision of the Fourth Circuit or of the United States Supreme Court, or involves a matter of public importance;

(ii) the judgment, order or decree involves a question of law requiring resolution of conflicting decisions; or

(iii) an immediate appeal from the judgment, order or decree may materially advance the progress of the case or proceeding in which the appeal is taken; and

the Fourth Circuit approves the direct appeal (28 U.S.C. § 158(d)(2)(A));

(2) all appellants and all appellees (if any) certify that one or more of the circumstances specified in clauses (i), (ii) or (iii) above exists, and the Fourth Circuit approves the direct appeal (28 U.S.C. § 158(d)(2)(A)); or

(3) the Bankruptcy Court or the District Court receives a request made by a majority of the appellants and a majority of the appellees (if any) to make the certification based upon one or more of the circumstances specified in clauses (i), (ii) or (iii) above, in which event the Bankruptcy Court or the District Court shall make the requested certification, but once again the Fourth Circuit must approve the direct appeal (28 U.S.C. §158(d)(2)(B)).

The parties may supplement the court's certification with a short statement of the basis for such certification. 28 U.S.C. § 158(d)(2)(C). Any requests for Bankruptcy Court or District Court certification in accordance with 28 U.S.C. § 158(d)(2)(B) (alternatives (1) and (3) above) shall be made not later than 60 days after the entry of the judgment, order or decree from which the appeal is being taken. 28 U.S.C. § 158(d)(2)(E).

A direct appeal or a request for a direct appeal to the Fourth Circuit does not stay any proceeding of the Bankruptcy Court or the District Court from which the appeal is taken unless the Bankruptcy Court, the District Court or the Fourth Circuit issues a stay of such proceeding pending the appeal. 28 U.S.C. § 158(d)(2)(D).

Bankruptcy Rule 8006 provides that a certification is effective when (1) the certification has been filed; (2) a timely appeal has been taken under Bankruptcy Rules 8003 or 8004; and (3) the Notice of Appeal has become effective under Bankruptcy Rule 8002. The certification must be filed with the clerk of the court in which the matter is pending. For purposes of this Rule, a matter remains pending in the Bankruptcy Court for 30 days after the effective date under Bankruptcy Rule 8002 of the first Notice of Appeal from the judgment, order or decree for which direct review is sought. A matter is deemed pending in the District Court thereafter.

A joint certification by all appellants and appellees under 28 U.S.C. § 158(d)(2)(A) must be made by using Official Form 424, a copy of which is included as Appendix 2 hereto. The parties may supplement the certification with a short statement of the basis for the certification, which may include the following information: the facts necessary to understand the question presented by the appeal, the question itself, the relief sought, and the reasons why the direct appeal should be allowed (including whether the judgment, order or decree involves a question of law as to which there is no controlling decision of the Fourth Circuit or the United States Supreme Court or involves a matter of public importance, whether the judgment, order or decree involves a question of law requiring resolution of conflicting decisions, or whether an immediate appeal may materially advance the progress of the case or proceeding in which the appeal is taken).

If the certification is made by a court rather than a joint certification by all appellants and appellees, only the court where the matter is pending as provided in Bankruptcy Rule 8006(b) may certify a direct review on request of the requisite parties or on its own motion.

A certification on the Bankruptcy Court's or the District Court's own motion must be set forth in a separate document. The clerk of the certifying court must serve it on the parties to the appeal. The certification must be accompanied by an opinion or memorandum that contains the information required by Bankruptcy Rule 8006(f)(2)(A)-(D) (see items (A) through (D) in the following paragraph). Within 14 days after the court's certification, a party may file with the clerk a short supplemental statement regarding the merits of certification.

A request by a party for certification that a circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) applies, or a request by a majority of the appellants and a majority of the appellees, must be filed with the clerk of the court where the matter is pending as provided in Bankruptcy Rule 8006(b). Such request must be filed within 60 days after the entry of the judgment, order or decree from which an appeal is sought to be taken. The request must be served on all parties to the appeal in the manner set forth for service of a Notice of Appeal under Bankruptcy Rule 8003(c)(1). A request for certification shall include the following information: (A) the facts necessary to understand the question presented; (B) the

question itself; (C) the relief sought; (D) the reasons why the direct appeal should be allowed, including which circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) applies; and (E) a copy of the judgment, order or decree and any related opinion or memorandum. A party may file a response to the request within 14 days after the request is served, or such other time as the court where the matter is pending allows. A party may file a cross-request for certification within 14 days after the request is served, or within 60 days after the entry of the judgment, order or decree, whichever occurs first. The matter shall proceed without oral argument unless the court where the matter is pending orders otherwise. If the Bankruptcy Court or the District Court certifies a direct appeal in response to the request, it must do so in a separate document, which document shall be served on the parties to the appeal.

Within 30 days after the date the certification becomes effective pursuant to Bankruptcy Rule 8006(a), a request for permission to take a direct appeal to the Fourth Circuit must be filed with the clerk of the Fourth Circuit in accordance with Federal Rule of Appellate Procedure 6(c). Rule 6(c) of the Federal Rules of Appellate Procedure sets forth procedures that govern proceedings thereafter in the Fourth Circuit.

RECORD ON APPEAL AND STATEMENT OF ISSUES
(Bankruptcy Rule 8009)

The appellant must file with the clerk of the

Bankruptcy Court 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. The designation and statement must be filed and served within 14 days after the appellant's Notice of Appeal as of right becomes effective under Bankruptcy Rule 8002 or an order granting leave to appeal is entered. A designation and statement served prematurely is to be treated as served on the first day on which filing is timely.

Within 14 days after being served, the appellee may file with the clerk of the Bankruptcy Court and serve on the appellant a designation of additional items to be included in the record. An appellee who files a cross-appeal must file and serve a designation of additional items to be included in the record and a statement of the issues to be presented on the cross-appeal. Within 14 days after service of the cross-appellant's designation and statement, a cross-appellee may file with the clerk of the Bankruptcy Court and serve on the cross-appellant a designation of additional items to be included in the record.

The record on appeal must include the following:

- docket entries kept by the clerk of the Bankruptcy Court;
- items designated by the parties;
- the Notice of Appeal;

- the judgment, order or decree being appealed;

- any order granting leave to appeal;

- any certification required for a direct appeal to the Fourth Circuit;

- any opinion, findings of fact and conclusions of law relating to the issues on appeal, including transcripts of all oral rulings;

- any transcript ordered as provided below;

- any statement of the evidence when a transcript is unavailable, as discussed below; and

- any additional items from the record that the appellate court orders.

If paper copies of items in the record on appeal are needed, a party filing a designation of such items must provide a copy of any such items requested by the clerk of the Bankruptcy Court. If the party fails to do so, the clerk of the Bankruptcy Court will prepare the copy at the party's expense. The record designations by appellant, appellee and cross-appellant or cross-appellee (if any) should identify each designated document by name and Bankruptcy Court docket number.

Instead of preparing the record on appeal as set forth above, the parties to the appeal together may prepare, sign and submit to the Bankruptcy Court a statement of the case showing how the issues presented by the appeal arose and were decided in the Bankruptcy Court. The agreed statement should set forth only those facts alleged and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is accurate, it, together with any additions that the Bankruptcy Court may consider necessary to a full presentation of the issues on appeal, must be approved by the Bankruptcy Court and must then be certified to the court where the appeal is pending as the record on appeal. The clerk of the Bankruptcy Court will transmit it to the clerk of the court where the appeal is pending. A copy of the agreed statement may be filed in place of the appendix required by Bankruptcy Rule 8018(b) or, in the case of a direct appeal to the Fourth Circuit by Rule 30 of the Federal Rules of Appellate Procedure.

If any difference arises about whether the record accurately discloses what occurred in the Bankruptcy Court, the difference must be submitted to and settled by the Bankruptcy Court and the record conformed accordingly. If an item has been improperly designated as part of the record on appeal, a party may move to strike that item. If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected, and a supplemental record may be certified and transmitted on stipulation of the parties, by the

Bankruptcy Court before or after the record has been forwarded, or by the court where the appeal is pending. All other questions as to the form and content of the record must be presented to the court where the appeal is pending.

Bankruptcy Rule 8009(b) sets forth the duties of the parties to an appeal regarding a transcript of the proceedings in the Bankruptcy Court. Within the time period set forth above for the appellant to file and serve the designation of the record and statement of issues, appellant must order in writing from the reporter (as defined in Bankruptcy Rule 8010(a)(1)) a transcript of such parts of the proceedings not already on file as the appellant considers necessary for the appeal, and file a copy of such order with the clerk of the Bankruptcy Court or, alternatively, file with the clerk of the Bankruptcy Court a certificate stating that the appellant is not ordering a transcript. A cross-appellant shall take the same actions with respect to ordering a transcript or not within 14 days after the appellant files a copy of its transcript order or certificate of not ordering a transcript. Within 14 days after the appellant or cross-appellant files a copy of its transcript order or certificate of not ordering a transcript, the appellee or cross-appellee may order in writing from the reporter a transcript of such additional parts of the proceedings as the appellee or cross-appellee considers necessary for the appeal. A copy of any such order must be filed with the clerk of the Bankruptcy Court. At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.

If an appellant intends to argue on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all relevant testimony and copies of all relevant exhibits.

If a transcript of a hearing or trial is unavailable, an appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be filed within the time period set forth above for the filing by appellant of its designation of items to be included in the record and statement of issues and served on the appellee. The appellee may serve objections or proposed amendments to the appellant's statement within 14 days after being served. The statement and any objections or proposed amendments must then be submitted to the Bankruptcy Court for settlement and approval. As settled and approved by the Bankruptcy Court, the statement must be included by the clerk of the Bankruptcy Court in the record on appeal.

A document placed under seal by the Bankruptcy Court may be designated as part of the record on appeal. In doing so, a party must identify it without revealing confidential or secret information, but the clerk of the Bankruptcy Court must not transmit it to the clerk of the court where the appeal is pending as part of the record. Instead, a party must file a motion with the appellate court requesting it to accept the document under seal. If the motion is granted, the movant must notify the

Bankruptcy Court of the ruling, and the clerk of the Bankruptcy Court shall promptly transmit the sealed document to the clerk of the appellate court.

As set forth in Local District Court Rule 404.2, if the appellant fails to designate the contents of the record on appeal or to file a statement of the issues to be presented within the time required by Bankruptcy Rule 8009, the clerk of the Bankruptcy Court shall forward to the clerk of the District Court a partial record consisting of a copy of the order or judgment appealed from, the Notice of Appeal, a copy of the docket entries and such other documents as the clerk of the Bankruptcy Court deems relevant. In addition, the District Court may order the clerk of the Bankruptcy Court to transmit such other documents as it deems relevant. When the partial record has been filed in the District Court, the District Court may, upon motion of the appellee (which motion shall be filed in the District Court) or upon its own initiative, dismiss the appeal for non-compliance with Bankruptcy Rule 8009 after giving the appellant an opportunity to explain the non-compliance and upon considering whether the non-compliance had a prejudicial effect on the other parties.[10]

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[10] The Fourth Circuit has established criteria that the District Court should follow in determining whether to dismiss an appeal for violating Bankruptcy Rule 8009 (formerly Bankruptcy Rule 8006). The criteria set forth

Footnote continued on next page

As set forth in Bankruptcy Rule 8009(g) all parties to an appeal must take any other action necessary to enable the clerk of the Bankruptcy Court to assemble and transmit the record.

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> in In re Serra Builders, Inc., 970 F.2d 1309, 1311 (4th Cir. 1992), are as follows:
>
> > "...the district court must take at least one of the following steps: (1) make a finding of bad faith or negligence; (2) give the appellant notice and an opportunity to explain the delay; (3) consider whether the delay had any possible prejudicial effect on the other parties; or (4) indicate that it considered the impact of the sanction and available alternatives."
>
> The Fourth Circuit has further clarified its test for dismissal stating that while Serra Builders literally only required the district court to take one of the four steps, "a proper application of its test will normally require a district court to consider and balance all relevant factors...." In re SPR Corp., 45 F.3d 70, 74 (4th Cir. 1995). Merely applying "the second step, giving the appellant notice and an opportunity to explain the delay, does not by itself suffice to dismiss an appeal." In re Weiss, 111 F.3d 1159, 1173 (4th Cir. 1997).

COMPLETING AND TRANSMITTING THE RECORD (Bankruptcy Rule 8010)

Transmission of the record from the Bankruptcy Court to the District Court (or the Fourth Circuit if a direct appeal has been granted by the Fourth Circuit) is the duty of the clerk of the Bankruptcy Court.[11]

Bankruptcy Rule 8010(a) sets out the duties of the court reporter with respect to transcripts of proceedings in the Bankruptcy Court. That Rule defines the term "reporter" to include the person or service selected under the Bankruptcy Court's procedures to transcribe recordings where no reporter was physically present at the proceeding in the Bankruptcy Court. The Rule provides that the reporter must prepare and file a transcript as follows: upon receiving an order for a transcript, the reporter must file in the Bankruptcy Court an acknowledgement of the request that shows when it was received and when the reporter expects to have the transcript completed. After completing the transcript, the reporter must file it with the clerk of the Bankruptcy Court, who will notify the clerk of the appellate court of its filing. If the transcript cannot be completed within 30 days after receiving the order, the

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[11] Documents are transmitted from the Bankruptcy Court to the District Court either by the forwarding of a paper document or copy thereof or by providing access to an electronic document. Local District Court Rule 403.

reporter must request an extension of time from the clerk of the Bankruptcy Court, and the clerk must enter on the docket and notify the parties to the appeal whether the extension is granted. If the reporter does not file the transcript on time, the clerk of the Bankruptcy Court must notify the Bankruptcy Judge.

Once the record is complete, the clerk of the Bankruptcy Court must transmit to the clerk of the appellate court either the record or a notice that the record is available electronically. If there are multiple appeals from a judgment, order or decree, the clerk of the Bankruptcy Court must transmit a single record. Upon receiving the record or notice that it is available electronically, the clerk of the appellate court must enter that information on the docket and promptly notify all parties to the appeal. [12] If the appellate court directs that paper copies of the record be provided, the clerk of that court must notify the appellant. If the appellant fails to provide such paper copies, the clerk of the Bankruptcy Court must prepare them at the appellant's expense. If a motion for leave to appeal has been filed, the clerk of the Bankruptcy Court must prepare and transmit the record or a notice that the record is available electronically only after the appellate court grants leave to appeal; provided that the clerk of the Bankruptcy Court must transmit to the clerk of the appellate court any parts of the record required for resolution of the motion for leave to appeal.

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[12] A copy of the current form of notice is attached as Appendix 3.

Similarly, if a motion for dismissal of the appeal, a stay pending appeal, approval of a supersedeas bond or additional security on a bond or undertaking on appeal, or any other intermediate order is filed in the appellate court, the clerk of the Bankruptcy Court shall transmit to the clerk of the appellate court any parts of the record designated by a party to the appeal or a notice that those parts are available electronically.

Counsel are encouraged to check the District Court docket to review what documents were actually included in the record received by the District Court. In addition, at the direction of the District Court or upon its own review of the record, the Bankruptcy Court may supplement the record in the District Court. Furthermore, the District Court may designate additional documents to be included in the record on appeal.

FILING AND SERVICE OF PLEADINGS AND OTHER PAPERS IN THE DISTRICT COURT; CORPORATE DISCLOSURE STATEMENT (Bankruptcy Rules 8011-8012)

From and after the date that an appeal is docketed in the District Court, all pleadings and other papers filed in connection with the appeal should be filed with the clerk of the District Court. Unless otherwise directed by the judge to whom the appeal is assigned, all appeals are subject to electronic filing in the District Court in accordance with the procedures established by

the District Court.[13]

Except as provided hereinafter with respect to the filing of a brief or appendix or a filing by an inmate confined in an institution, the filing of a document with the clerk of the District Court is timely only if the clerk receives the document within the time fixed for filing. A brief or appendix is also timely filed if, on or before the last day for filing, it is mailed to the clerk of the District Court by first-class mail, or other class of mail that is at least as expeditious, postage prepaid, or it is dispatched to a third-party commercial carrier for delivery within 3 days to the clerk, provided that the District Court procedures permit or require a brief or appendix to be filed by mailing or delivery by a commercial carrier. With respect to an inmate confined in an institution, a document is timely filed if it is deposited in the institution's internal mailing system on or before the last day for filing. Such timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

Generally, the format of documents filed in the District Court shall comply with Local District Court Rule 102.2.b, including 8½" x 11" pages, appropriate

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[13] Counsel representing a party in an appeal to the District Court needs to be a registered user of the District Court CM/ECF system.

margins, double-spaced lines of text except quotations and footnotes, page numbering at the bottom of each page, and printed or written materials only on the front side of pages. The clerk of the District Court shall not refuse to accept for filing any document transmitted for that purpose solely because it is not presented in proper form as required by the Bankruptcy Rules or by any local rule or practice.

Counsel should file documents electronically subject to the exceptions in the District Court's electronic filing procedures. A paper courtesy copy of any document filed electronically in the District Court which, including attachments, is longer than fifteen (15) pages should be provided to the District Court for use by the judge to whom the appeal is assigned. The paper copy and a copy of the Notice of Electronic Filing should be sent to the clerk's office of the District Court.

Pro se parties, other than members in good standing of the Bar of the District Court[14], should file and serve documents in paper format. The clerk's office of the District Court will scan and electronically file documents submitted by *pro se* parties. The scanned version will be the official court record.

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[14] An attorney who is a member in good standing of the Bar of the District Court who is representing himself or herself is subject to the same electronic filing requirements which would be applicable if he or she were represented by counsel.

Every document filed electronically must include the electronic signature of the person filing it or, if the person is represented, the electronic signature of counsel. Every document filed in paper form must be signed by the person filing the document or, if the person is represented, by counsel.

When an appeal is assigned to a District Court judge, it will usually be assigned to a judge in the Division of the Maryland U.S. District Court whose chambers are in the courthouse where the bankruptcy case is pending. However, it is possible that the appeal may be assigned to a judge in a different Division of the Maryland U.S. District Court. For example, an appeal in a Greenbelt bankruptcy case may be assigned to a District Court judge sitting in the Northern Division (in Baltimore). In such event, pleadings and other papers filed after the appeal has been assigned to a District Court judge should be filed with the clerk's office of the District Court in the Division where the assigned judge is located, unless the court otherwise directs. Any paper documents to be filed with the District Court and any courtesy copies for the judge should be sent to the clerk's office in the Division where the assigned judge is located.

Copies of all pleadings and other papers filed by a party should, at or before the time of filing, be served by the party, or a person acting on behalf of such party, on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel. Service may be made electronically through the CM/ECF system on counsel who are registered users of the District Court

CM/ECF system. Service may be made by or on an unrepresented party by personal delivery, mail or third-party commercial carrier for delivery within 3 days. If service is made by mail, such service is complete on mailing; if service is made by electronic means, such service is complete on transmission unless the party making service receives notice that the document was not transmitted successfully.

All documents presented for filing must contain either an acknowledgment of service by the person served or proof of service, certified by the person who made service, stating the date and manner of service, the names of the persons served, and the mail or electronic address, the fax number or the address of the place of service, as appropriate for the manner of service, for each person served. The clerk of the District Court may permit documents to be filed without acknowledgment or proof of service, but will require the acknowledgment or proof of service to be filed promptly thereafter. When a brief or appendix is filed, the proof of service must also state the date and manner by which it was filed.

As provided in Bankruptcy Rule 8012, any nongovernmental corporate party appearing in the District Court must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. For purposes of this Rule, the term "corporation" includes limited liability companies, limited liability partnerships and other entities as defined in § 101(9) of the Bankruptcy Code. The corporate

disclosure statement must be filed with the party's principal brief or upon filing a motion, response, petition or answer in the District Court, whichever occurs first. Even if such a statement has already been filed, the party's principal brief must include a statement before the table of contents. A party must supplement its statement whenever the required information changes.

TEMPORARY RELIEF PENDING APPEAL, INCLUDING STAYS PENDING APPEAL (Bankruptcy Rule 8007)

Upon the entry of an adverse judgment or order in the Bankruptcy Court, counsel may pursue a variety of remedies. Pursuant to Bankruptcy Rule 7062 and Rule 62 of the Federal Rules of Civil Procedure, there is an automatic stay of enforcement of most judgments and orders entered by the Bankruptcy Court in adversary proceedings (i.e., those proceedings that are brought under Part VII of the Bankruptcy Rules, Bankruptcy Rule 7001 et seq.) for a period of 14 days after the entry of such judgment or order.[15] In general, there is no such

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[15] Rule 62 of the Federal Rules of Civil Procedure should be consulted as to what orders and judgments in adversary proceedings are not subject to this 14-day automatic stay. One exception to the 14-day automatic stay is an order or judgment granting, denying or dissolving an injunction. In addition, the 14-day automatic stay provisions of Rule 62, Fed. R. Civ. P.,

Footnote continued on next page

14-day automatic stay of enforcement of judgments or orders entered in contested matters. However, there are exceptions to this general rule; there are provisions in the Bankruptcy Rules for the 14-day automatic stay of enforcement of certain orders of the Bankruptcy Court in certain specific contested matters. For example, orders granting relief from the automatic stay provided for in §§ 362, 922, 1201 and 1301 of the Bankruptcy Code, orders authorizing the use, sale or lease of property of the estate (other than cash collateral), orders authorizing the assignment of executory contracts or unexpired leases pursuant to §365(f) of the Bankruptcy Code, and orders confirming a plan in a Chapter 11 or Chapter 9 case are all stayed for 14 days after the entry of such order, unless the Bankruptcy Court orders otherwise. See Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), and 3020(e).

Following the entry of an adverse judgment or order in the Bankruptcy Court, a party may seek relief from the judgment or order pursuant to Bankruptcy Rules 9023 or 9024 or file a notice of appeal pursuant to Bankruptcy Rule 8002. The filing of a notice of appeal does not result in any further stay of proceedings. A motion for a stay or further stay (if the 14-day automatic

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Footnote continued from previous page

> also apply to appeals relating to contested involuntary petitions, contested petitions commencing a case ancillary to a foreign proceeding, and all proceedings to vacate an order for relief. See Bankruptcy Rule 1018.

stay is applicable) must be filed under either the provisions of Rule 62 of the Federal Rules of Civil Procedure (made applicable by Bankruptcy Rules 7062 and 1018) or Bankruptcy Rule 8007.

Ordinarily, a party must move first in the Bankruptcy Court for the following relief:

> (A) a stay of a judgment, order or decree of the Bankruptcy Court pending appeal;
> (B) the approval of a supersedeas bond;
> (C) an order suspending, modifying, restoring or granting an injunction while an appeal is pending; or
> (D) the suspension or continuation of proceedings in a case or any other appropriate order during the pendency of an appeal to protect the rights of all parties in interest. Bankruptcy Rule 8007(a)(1).

The motion may be made either before or after the Notice of Appeal is filed. Thus, a motion for a stay of an order or judgment pending appeal should in general first be made to the Bankruptcy Court.[16]

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[16] The factors originally articulated for a party to consider when seeking a stay pending appeal were stated as follows:

Footnote continued on next page

A motion seeking any of the foregoing relief, or

Footnote continued from previous page

> "The party seeking such a stay must show: (1) that he will likely prevail on the merits of the appeal; (2) that he will suffer irreparable injury if the stay is denied; (3) that other parties will not be substantially harmed by the stay; and (4) that the public interest will be served by granting the stay." Culver v. Boozer, 285 B.R. 163, 166 (D. Md. 2002) (citing Long v. Robinson, 432 F.2d 977, 979 (4th Cir. 1970)).

In 2009, the Fourth Circuit, following the United States Supreme Court's decision in Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7 (2008), restated the standards applicable to preliminary injunctions, requiring a movant to show that (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. All four elements must be satisfied. Real Truth About Obama, Inc. v. FEC, 575 F.3d 342, 346-47 (4th Cir. 2009), vacated on other grounds, 559 U.S. 1089 (2010); WV Ass'n of Club Owners & Fraternal Servs., Inc. v. Musgrave, 553 F.3d 292, 298 (4th Cir. 2009). This reformulated standard should be applied by a party seeking a stay pending appeal. See Rose v. Logan, 2014 U.S. Dist. LEXIS 98404, 2014 WL 3616380 (D. Md. 2014).

seeking to vacate or modify a Bankruptcy Court's order granting such relief, may also be made in the District Court (or the Fourth Circuit, if a direct appeal has been granted by the Fourth Circuit). Such motion must show that moving first in the Bankruptcy Court would be impracticable or, if a motion was made in the Bankruptcy Court, either state that the court has not yet ruled on the motion or state that the court has ruled and set out any reasons given for the ruling. Such motion must also include the reasons for granting the relief requested and the facts relied upon, affidavits or other sworn statements supporting facts subject to dispute, and any relevant parts of the record. The movant must give reasonable notice of the motion to all parties. The appellate court may condition relief on filing a bond or other appropriate security with the Bankruptcy Court.[17] The court may require a trustee to file a bond or other appropriate security when the trustee appeals. A bond or other security is not required when an appeal is taken by the United States or any officer, agency or department thereof.

In the event a motion for a stay is filed directly with the District Court, Local District Court Rule 404.4 (Procedure Regarding Motion to Stay Pending Appeal) requires the appellant seeking a stay to file with the clerk of the District Court copies of all documents in the

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[17] If a bond is required, counsel are encouraged to check with the clerk of the District Court as to the list of approved sureties.

record of the Bankruptcy Court relevant to the appeal, along with the stay motion. The District Court will then open a civil file and give immediate consideration to the motion to stay. If the appeal is ultimately perfected, it will be assigned the same case number.

It should be noted that with respect to certain orders of the Bankruptcy Court, the failure to obtain a stay pending appeal may result in the appeal being dismissed as moot. For example, courts have dismissed on mootness grounds appeals from confirmation orders, orders to sell or use property of the estate pursuant to § 363 of the Bankruptcy Code and orders to obtain post-petition financing or credit pursuant to § 364 of the Bankruptcy Code. See, e.g., §§ 363(m) and 364(e) of the Bankruptcy Code and In re Rare Earth Minerals, 445 F.3d 359 (4th Cir. 2006); In re U.S. Airways Group, Inc., 369 F.3d 806 (4th Cir. 2004); Mac Panel Co. v. Va. Panel Corp., 283 F.3d 622 (4th Cir. 2002); In re Adamson Co., 159 F.3d 896 (4th Cir. 1998); Willemain v. Kivitz, 764 F.2d 1019 (4th Cir. 1985); United States Small Business Administration v. XACT Telesolutions, Inc., 2006 U.S. Dist. LEXIS 621, 2006 WL 66665 (D. Md. 2006); but compare Behrmann v. Nat'l Heritage Found., Inc., 663 F.3d 704, 713-14 (4th Cir. 2011). In addition, appeals from orders lifting the automatic stay have been dismissed as moot in situations where there was no stay pending appeal, the party granted relief from stay went forward with a mortgage foreclosure sale and the property was sold before the appeal could be heard, Constructivist Foundation, Inc. v. Bonner, 254 B.R. 863 (D. Md. 2000), and where there was no stay pending

appeal and a landlord who had been granted relief from stay had the debtor evicted before the appeal could be heard, In re Foreman, 278 B.R. 92 (D. Md. 2002).

Pursuant to Bankruptcy Rule 8007(e), the Bankruptcy Court may notwithstanding the pendency of the appeal suspend or order the continuation of other proceedings in the case or issue any other appropriate orders during the pendency of the appeal to protect the rights of all parties in interest.

INDICATIVE RULINGS
(Bankruptcy Rule 8008)

Bankruptcy Rule 8008 provides for a new procedure for indicative rulings when a bankruptcy court determines that, because of a pending appeal, the court may lack jurisdiction to grant certain requested relief that the court concludes is meritorious or raises a substantial issue. This Rule is modeled on Rule 62.1 F.R.Civ. P., and Rule 12.1, F.R.App. P.

Bankruptcy Rule 8008 provides that if a party files a timely motion in the Bankruptcy Court for relief that the Bankruptcy Court lacks authority to grant because of a pending appeal, the Bankruptcy Court may (1) defer considering the motion, (2) deny the motion, or (3) state that the court would grant the motion if the court where the appeal is pending remands for that purpose, or state that the motion raises a substantial issue. The movant must promptly notify the clerk of the District Court (or the Fourth Circuit, if a direct appeal

has been granted by the Fourth Circuit) if the Bankruptcy Court states that it would grant the motion or that the motion raises a substantial issue.

If the Bankruptcy Court has stated that it would grant the motion or that the motion raises a substantial issue, the District Court may remand to the Bankruptcy Court for further proceedings on the motion, but unless it expressly dismisses the appeal, the District Court retains jurisdiction of the appeal. If the District Court remands to the Bankruptcy Court for the purpose of ruling on the motion but retains jurisdiction, the parties must promptly notify the clerk of the District Court when the Bankruptcy Court has decided the motion on remand. Thereupon, the District Court will decide whether and how to proceed with the appeal.

This new Bankruptcy Rule is designed to provide a mechanism for the Bankruptcy Court to resolve any potential jurisdictional questions about matters pending before it if a related matter is on appeal. The indicative ruling procedure may, for example, be useful if a settlement is reached in a matter on appeal and the parties wish to file a Bankruptcy Rule 9019 motion for approval of the settlement with the Bankruptcy Court.

MOTIONS, INCLUDING EMERGENCY MOTIONS AND MOTIONS TO INTERVENE (Bankruptcy Rule 8013)

Before an appeal has been docketed in the District Court, motions to dismiss the appeal should be filed with

the clerk of the Bankruptcy Court. The clerk of the Bankruptcy Court will wait until the response period with respect to such motion has run (7 days from the date of service), and thereafter the clerk of the Bankruptcy Court will transmit the motion and any response to the District Court for disposition.

In general, once an appeal has been docketed in the District Court, motions shall be filed with the clerk of the District Court, with proof of service on the other parties to the appeal, and shall state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it. Any supporting affidavit or other document shall be filed and served with the motion. Any affidavit filed in connection with the motion must contain only factual information, not legal argument, and a motion seeking substantive relief must include a copy of the Bankruptcy Court's judgment, order or decree and any accompanying opinion as a separate exhibit. A separate brief supporting or responding to a motion should not be filed, and unless the court orders otherwise, a notice of motion and a proposed order is not required.

Unless the District Court orders otherwise, any party to the appeal may file a response to the motion within 7 days after service of the motion. Unless the District Court orders otherwise, the movant may file a reply to a response within 7 days after service of the response, but may only address matters raised in the response.

If a party files a motion to expedite an appeal, it must explain what justifies considering the appeal ahead of other matters. If the District Court grants the motion, it may accelerate the time to transmit the record, the deadline for filing briefs and other documents, oral argument and the resolution of the appeal. A motion to expedite an appeal may be filed as an emergency motion.

The District Court may rule on a motion for a procedural order at any time without awaiting a response. A party adversely affected by the ruling may move to reconsider, vacate or modify it within 7 days after the procedural order is served.

Unless ordered otherwise by the District Court, all motions will be decided without oral argument.

When a movant requests expedited action on a motion because irreparable harm would occur during the time needed to consider a response, the movant must insert the word "Emergency" before the title of the motion. Any such emergency motion must be accompanied by an affidavit setting out the nature of the emergency, state whether all grounds for it were submitted to the Bankruptcy Court and, if not, why the motion should not be remanded for the Bankruptcy Court to consider, include the e-mail addresses, office addresses and telephone numbers of moving counsel and, when known, of opposing counsel and any unrepresented parties to the appeal and be served in accordance with Bankruptcy Rule 8011. Before filing an emergency motion, movant must make every practicable effort to

notify opposing counsel and any unrepresented parties in time for them to respond. The affidavit accompanying the emergency motion must state when and how notice was given or state why giving it was impracticable.

A motion and responses to a motion must not exceed 20 pages, and a reply to a response must not exceed 10 pages.

Bankruptcy Rule 8013(g) governs motions to intervene in an appeal. Unless a statute provides otherwise, an entity seeking to intervene in an appeal pending in the District Court must move for leave to intervene and serve a copy of the motion on the parties to the appeal. The motion or other notice of intervention authorized by statute must be filed within 30 days after the appeal is docketed in the District Court. It must concisely state the movant's interest, the grounds for intervention, whether intervention was sought in the Bankruptcy Court, why intervention is being sought at this stage of the proceeding, and why participating as an amicus curiae would not be adequate.

SERVING AND FILING BRIEFS
(Bankruptcy Rules 8014-8015, 8018)

Bankruptcy Rule 8018(a) addresses the time for filing briefs in connection with an appeal to the District Court. Unless the District Court by order excuses the filing of briefs or specifies different time limits, the appellant must serve and file a brief within 30 days after the docketing of notice that the record has been

transmitted or is available electronically; the appellee must serve and file a brief within 30 days after service of the appellant's brief; and the appellant may serve and file a reply brief within 14 days after service of the appellee's brief, but any reply brief must be filed at least 7 days before scheduled argument unless the District Court, for good cause, allows a later filing.

As set forth in Local District Court Rule 404.3, if the appellant fails to serve and file a brief within the time required by Bankruptcy Rule 8018, the District Court may, upon motion of the appellee (which motion shall be filed in the District Court) or upon its own initiative, dismiss the appeal after giving the appellant an opportunity to explain the non-compliance and upon considering whether the non-compliance has a prejudicial effect on the other parties.[18]

An appellee who fails to file a brief will not be heard at oral argument (if any) unless the District Court grants permission.

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[18] With respect to the criteria to be applied on a motion to dismiss an appeal because of an untimely non-jurisdictional filing, see the Fourth Circuit authorities set forth in footnote 10, supra. Note that In re Weiss, 111 F.3d 1159, 1172-73 (4th Cir. 1997), cited in footnote 10 above, specifically involved a district court's dismissal of an appeal pursuant to former Bankruptcy Rules 8001(a) and 8009(a) (now Bankruptcy Rules 8003(a)(2) and 8018(a)).

Bankruptcy Rules 8014 and 8015 provide specific guidelines for the form and length of briefs. The appellant's brief must contain the following under appropriate headings and in the order indicated:

(1) a corporate disclosure statement, if required by Bankruptcy Rule 8012;
(2) a table of contents with page references;
(3) a table of authorities with cases (arranged alphabetically), statutes and other authorities and references to the pages of the brief where they are cited;
(4) a jurisdictional statement, including:
    (A) the basis for the Bankruptcy Court's subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;
    (B) the basis for the District Court's jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;
    (C) the filing dates establishing the timeliness of the appeal; and
    (D) an assertion that the appeal is from a final judgment, order or decree, or information establishing the District Court's jurisdiction on another basis;
(5) a statement of the issues presented and, for each one, a concise statement of the

applicable standard of appellate review;

(6) a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record;

(7) a summary of the argument, which must contain a succinct, clear and accurate statement of the arguments made in the body of the brief and which must not merely repeat the argument headings;

(8) the argument, which must contain the appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies;

(9) a short conclusion stating the precise relief sought; and

(10) the certificate of compliance, if required by Bankruptcy Rule 8015(a)(7) or (b).

The appellee's brief, must conform to the requirements of (1) – (8) and (10) above, except that none of the following needs to appear unless the appellee is dissatisfied with the appellant's statement: the jurisdictional statement, the statement of the issues and the applicable standard of appellate review, and the statement of the case.

The appellant may file a reply brief to the appellee's brief. Any such reply brief shall include a

table of contents and a table of authorities.

If the District Court's determination of the issues requires the study of the Bankruptcy Code or other statutes, rules, regulations or similar authority, the relevant parts thereof must be set out in the brief or in an addendum to the brief. In a case involving more than one appellant or appellee, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.

If pertinent and significant authorities come to a party's attention after the party's brief has been filed, or after oral argument but before a decision, a party may promptly advise the clerk of the District Court by a signed submission setting forth the citation to such supplemental authority. The submission must be served on the other parties to the appeal and must state the reasons for the supplemental citation, referring either to the pertinent page of a brief or to a point argued orally. The body of such submission must not exceed 350 words. Any response to the submission must be made within 7 days after the party is served unless the court orders otherwise, and it must conform to the same limitations as the submission.

Bankruptcy Rule 8015 sets forth detailed rules with respect to the form and length of briefs. As to the length of briefs, the general rule is that an appellant's brief and an appellee's brief must not exceed 30 pages and a reply brief must not exceed 15 pages. There is an

exception to this rule if a brief complies with very specific type-volume limitations and a certificate of compliance is filed, all as set forth in Bankruptcy Rule 8015(a)(7). The type-volume exception to the page limitation provides that a principal brief (the brief of an appellant or appellee) is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text. A reply brief is acceptable if it contains no more than half of the type volume specified for the principal brief. In making this type-volume determination, headings, footnotes and quotations count toward the word and line limitations; the corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules or regulations, and any certificates of counsel do not count toward the limitation. If a party intends to rely on the type-volume exception, that party's brief must include a certificate signed by the attorney or unrepresented party that the brief complies with the type-volume limitation and must further state either the number of words in the brief or the number of lines in monospaced type in the brief. The certification requirement is satisfied by a certificate of compliance that conforms to Official Form 417C, a copy of which is included as Appendix 4 hereto.

Bankruptcy Rule 8015(a) sets forth specific provisions with respect to how briefs are to be prepared, whether they are paper copies of a brief or electronically filed briefs. Included in those provisions are details as to reproduction of the brief, its cover, binding of the brief, paper size, line spacing, margins, typeface and type

styles.

As set forth in Local District Court Rule 404.1.b, the appellant shall append to appellant's opening brief a copy of the opinion of the Bankruptcy Court that is being appealed from.

Details for filing briefs and other documents in the District Court's CM/ECF system are available on the District Court's website (www.mdd.uscourts.gov).

PREPARING AND SERVING THE APPENDIX (Bankruptcy Rules 8015(c)-(d), 8018(b)-(e))

Bankruptcy Rule 8018(b) provides that, unless the District Court by rule or an order in the case provides otherwise or the parties elect to proceed on an agreed statement as the record on appeal in accordance with Bankruptcy Rule 8009(d), the appellant must serve and file with its principal brief excerpts of the record as an appendix. The appendix must contain the relevant entries in the bankruptcy docket, the complaint and answer, or other equivalent filings, the judgment, order or decree from which the appeal is taken, any other orders, pleadings, jury instructions, findings, conclusions or opinions relevant to the appeal, the notice of appeal, and any relevant transcript or portion thereof.

The appellee may also serve and file with its brief an appendix that contains material required to be included by the appellant or relevant to the appeal or cross-appeal but omitted by the appellant. The appellant

as cross-appellee may also serve and file with its response an appendix that contains material relevant to matters raised initially by the principal brief in the cross-appeal, but omitted by the cross-appellant.

The appendix must begin with a table of contents identifying the page at which each part of the appendix begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. When pages from a transcript of proceedings are included in the appendix, the transcript page numbers must be shown in brackets immediately before the included pages. Omissions in the text of documents or the transcript must be indicated by asterisks. Immaterial formal matters such as captions, subscriptions, acknowledgments and the like should be omitted. Exhibits designated for inclusion in the appendix may be reproduced in a separate volume or volumes, suitably indexed.

When using the CM/ECF system, an appendix should be filed as an attachment to the brief. Each item in the appendix should be filed as a separate attachment. Whenever possible, parties are encouraged to attach versions of items which were electronically converted to PDF instead of scanned PDF versions.

Further provisions with respect to the form of appendices, whether filed as a paper copy or electronically, are set forth in Bankruptcy Rule 8015(c) and (d).

The District Court may dispense with the appendix and permit an appeal to proceed on the original record, with the submission of any relevant parts of the record that the District Court orders the parties to file.

HEARING OF THE APPEAL
(Bankruptcy Rule 8019)

As provided in Bankruptcy Rule 8019, oral argument must be allowed unless the District Court after examining the briefs and record determines that oral argument is unnecessary because (1) the appeal is frivolous, (2) the dispositive issue or issues have been recently authoritatively decided, or (3) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

Any party may file or the District Court may require a statement explaining why oral argument should or should not be permitted. The District Court will advise all parties of the date, time and place for oral argument, and the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed reasonably in advance of the hearing date.

At the argument, the appellant opens and concludes the argument. Counsel should not read at length from briefs, the record or authorities.

If there is a cross-appeal, who is the appellant and who is the appellee for purposes of oral argument is

determined pursuant to Bankruptcy Rule 8016(b). Unless the District Court directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.

If either appellant or appellee fails to appear for argument, the District Court may hear the other party's argument. If neither party appears, the case will be decided on the briefs unless the District Court orders otherwise.

The parties may agree to submit a case for decision on the briefs, but the District Court may direct that the case be argued.

Counsel intending to use physical exhibits at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, counsel must remove the exhibits from the courtroom unless the court directs otherwise. The clerk may destroy or dispose of exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them.

In practice in Maryland, it is likely that there will not be oral argument of a bankruptcy appeal. With this in mind, counsel should file an appropriate statement with the District Court if there is a compelling reason for oral argument.

VOLUNTARY DISMISSAL OF APPEAL
(Bankruptcy Rule 8023)

The clerk of the District Court shall dismiss an appeal if the parties file a signed agreement that the appeal should be dismissed specifying how costs and fees are to be paid. In addition, the District Court may dismiss an appeal on a motion by the appellant on terms agreed to by the parties or fixed by the District Court. As the Advisory Committee Note to Bankruptcy Rule 8023 states, nothing in the Rule prohibits the District Court from dismissing an appeal for other reasons authorized by law, such as the failure to prosecute an appeal.

EXPEDITED APPEALS
(Bankruptcy Rule 8013)

In order to obtain an expedited appeal, in addition to filing a Notice of Appeal in the Bankruptcy Court, counsel should consider filing an emergency motion with the District Court pursuant to Bankruptcy Rule 8013(d). The motion should contain the word "Emergency" in the caption and should be accompanied by an affidavit setting forth the irreparable harm which will occur if relief is not granted. Refer to the section entitled Motions, Including Emergency Motions And Motions To Intervene for the requirements for filing an emergency motion.[19] In addition, as provided in Bankruptcy Rule 8013(a)(2)(B), a motion to expedite an appeal must

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[19] See pp. 40-43 supra.

explain what justifies considering the appeal ahead of other matters. Every effort practicable should be made to notify opposing counsel and any unrepresented parties before filing the motion, and the affidavit accompanying the motion should state when and how notice was given or why giving it was impracticable.

Depending upon the issues being appealed, counsel may seek both to shorten the time for filing responsive pleadings pursuant to Bankruptcy Rule 9006(c) and for a stay of judgment pending appeal pursuant to Bankruptcy Rule 8007. Refer to the section entitled Temporary Relief Pending Appeal, Including Stays Pending Appeal[20] for the steps necessary to obtain a stay of proceedings.

If the District Court grants the motion to expedite the appeal, it may accelerate the time to transmit the record, the deadline for filing briefs and other documents, oral argument and the resolution of the appeal.

CROSS-APPEALS
(Bankruptcy Rules 8002(a)(3), 8016)

As provided in Bankruptcy Rule 8002(a)(3), the time within which a cross-appeal may be taken is limited to the later of (1) 14 days after the date when the first Notice of Appeal is filed or (2) the time otherwise allowed by Bankruptcy Rule 8002 (discussed above in the section

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[20] See pp. 33-39 supra.

entitled Commencing The Appellate Process[21]).

Bankruptcy Rule 8016 adds a number of additional rules applicable to cross-appeals. If there are multiple Notices of Appeal filed, for purposes of determining who is the appellant and who is a cross-appellant, the party who files a Notice of Appeal first is the appellant. If notices are filed on the same day, the plaintiff, petitioner, applicant or movant in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.

In a case involving a cross-appeal, the appellant must file a principal brief. The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief filed by appellant. Thereafter, the appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response filed by appellee. Finally, the appellee may file a brief in reply to the response filed by appellant in the cross-appeal, which brief must be limited to the issues presented in the cross-appeal.

Bankruptcy Rule 8016(d) sets forth page limitations for the briefs filed in connection with a cross-appeal. In general, the appellant's principal brief must not exceed 30 pages; the appellee's principal and

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[21] See pp. 2-12 supra.

response brief must not exceed 35 pages; the appellant's response and reply brief must not exceed 30 pages; and the appellee's reply brief must not exceed 15 pages. This Rule is subject, however, to an exception. In connection with a cross-appeal, the appellant's principal brief or the appellant's response and reply brief is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text; the appellee's principal and response brief is acceptable if it contains no more than 16,500 words or it uses a monospaced face and contains no more than 1,500 lines of text; and the appellee's reply brief is acceptable if it contains no more than half of the type volume specified earlier in this sentence with respect to the appellant's principal brief. Headings, footnotes and quotations count toward the word and line limitations; the corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules or regulations, and any certificates of counsel do not count toward the limitation. In addition, in order to qualify for this page limit exception, a certificate of compliance in conformity with Bankruptcy Rule 8015(a)(7)(C) must be filed with the brief.

The time periods for serving and filing briefs in connection with cross-appeals is set forth in Bankruptcy Rule 8016(e). Unless the District Court by order in a particular case excuses the filing of briefs or specifies a different time period, the appellant's principal brief is due within 30 days after the docketing of notice that the record has been transmitted or is available electronically;

the appellee's principal and response brief is due within 30 days after the appellant's principal brief is served, the appellant's response and reply brief is due within 30 days after the appellee's principal and response brief is served, and the appellee's reply brief is due within 14 days after the appellant's response and reply brief is served, but at least 7 days before any scheduled argument unless the District Court for good cause allows a later filing.

As a practice note, if your client is affected by a final order or judgment in the Bankruptcy Court, do not assume that you will be able to participate in an appeal simply because the trustee or another party in the case has filed a Notice of Appeal. "[O]nly a party who files a notice of appeal invokes the appellate jurisdiction of the district court . . . ." Smith v. Dairymen, Inc., 790 F.2d 1107, 1111 (4th Cir. 1986).

AMICUS CURIAE ON APPEAL (Bankruptcy Rule 8017)

The United States or an officer or agency thereof or a state may file an amicus-curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing. The District Court, on its own motion and with notice to all parties to an appeal, may request a brief by an amicus curiae.

A person, entity or organization desiring to file an amicus-curiae brief must file a motion with the District

Court. The motion must be accompanied by the proposed brief and state the movant's interest and the reasons why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the appeal.

Details with respect to the form, content and length of an amicus brief are set out in Bankruptcy Rule 8017(c) and (d). Among other requirements, the cover of the amicus brief must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. An amicus brief must include, among other things, a table of contents, a table of authorities, a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file, a statement indicating whether counsel to one of the parties to the appeal authored the brief in whole or in part, whether a party or counsel to a party contributed money that was intended to fund preparing or submitting the brief, and whether a person, other than the amicus curiae, its members or its counsel, contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person, and an argument, which may be preceded by a summary and need not include a statement of the applicable standard of review. Unless otherwise permitted by the District Court, an amicus brief can be no longer than one-half the maximum length authorized for a party's principal brief, not including any added length that the court may grant to a party to the appeal.

An amicus curiae must file its brief, accompanied by a motion for filing such brief when necessary, no later

than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's principal brief is filed. The District Court may grant leave for later filing, specifying the time within which an opposing party may answer. An amicus curiae may not file a reply brief unless the District Court provides otherwise. An amicus curiae may participate in oral argument only with the District Court's permission.

DISPOSITION OF APPEAL, COSTS, FRIVOLOUS APPEALS AND OTHER MISCONDUCT (Bankruptcy Rules 8020, 8021 and 8024)

The applicable standard of appellate review is no longer set forth in the Bankruptcy Rules. Applicable Fourth Circuit and District Court case law should be researched and cited to the District Court by the parties to an appeal.[22]

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[22] With respect to the applicable standard of appellate review, see, e.g., In re Official Committee of Unsecured Creditors for Dornier Aviation (North America), Inc., 453 F.3d 225, 231 (4th Cir. 2006); In re Weiss, 111 F.3d 1159, 1166 (4th Cir. 1997); In re Southeast Hotel Properties Ltd, Partnership, 99 F.3d 151, 154 (4th Cir. 1996); In re Bryson Properties, XVIII, 961 F.2d 496, 499 (4th Cir.), cert. denied, 506 U.S. 866 (1992); In re Green, 934 F.2d 568 (4th Cir. 1991); In re Rood, 482 B.R. 132, 141 (D. Md. 2012), aff'd, 532 Fed. Appx. 370, 533 Fed. Appx. 228 (4th Cir. 2013).

In accordance with Bankruptcy Rule 8024, if a judgment is not entered by the District Court Judge at the time of rendering decision on the appeal, the clerk of the District Court shall prepare, sign and enter the judgment after receiving the opinion of the District Court or if there is no opinion, as the court instructs. Noting the judgment on the District Court's docket constitutes entry of judgment.

Immediately upon the entry of judgment, the clerk of the District Court shall transmit a notice of the entry of such judgment to each party to the appeal, to the United States trustee and to the clerk of the Bankruptcy Court, together with a copy of any opinion, and shall note the date of the transmission on the District Court docket. The clerk of the District Court will mail a paper copy of any order, judgment, opinion or other document entered by the District Court to any *pro se* party. The clerk will not mail paper copies of electronic documents to attorneys as they are presumed to be registered users of the CM/ECF system. If any physical items were transmitted as part of the record on appeal, they will be returned to the clerk of the Bankruptcy Court on disposition of the appeal.

Counsel should not assume that the Bankruptcy Court has a copy of the judgment, order, opinion or other disposition of the District Court. Counsel should send a copy of such judgment, order, opinion or other disposition to the Bankruptcy Judge. Counsel are encouraged to request a scheduling conference or hearing in the Bankruptcy Court regarding further proceedings in that

Court in light of the disposition of the appeal by the District Court, if appropriate.

Pursuant to Bankruptcy Rule 8021, unless the law provides or the District Court orders otherwise (1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise; (2) if a judgment, order or decree is affirmed, costs are taxed against the appellant; (3) if a judgment, order or decree is reversed, costs are taxed against the appellee; and (4) if a judgment, order or decree is affirmed or reversed in part, modified or vacated, costs are taxed only as the District Court orders. Costs for or against the United States, its agency or its officer may be assessed only if authorized by law.

The following costs on appeal are taxable in the Bankruptcy Court for the benefit of the party entitled to costs as provided above: (1) the production of any required copies of a brief, appendix, exhibit or the record; (2) the preparation and transmission of the record; (3) the reporter's transcript, if needed to determine the appeal; (4) premiums paid for a supersedeas bond or other bonds to preserve rights pending appeal; and (5) the fee for filing the Notice of Appeal. A party who wants costs taxed must, within 14 days after entry of the judgment on appeal, file with the clerk of the Bankruptcy Court, with proof of service, an itemized and verified bill of costs. Objections thereto must be filed within 14 days after service of the bill of costs, unless the Bankruptcy Court extends the time.

Pursuant to Bankruptcy Rule 8020, if the District Court determines that an appeal is frivolous, the court may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee. The District Court may discipline or sanction an attorney or party appearing before it for other misconduct, including failure to comply with any court order. Before doing so, the court must afford the attorney or party reasonable notice, an opportunity to show cause to the contrary and, if requested, a hearing.

MOTION FOR REHEARING (Bankruptcy Rule 8022)

A motion for rehearing by the District Court must be filed within 14 days after entry of the judgment of the District Court unless the time is shortened or extended by court order or local rule. Pursuant to Rule 6(b)(2)(A) of the Federal Rules of Appellate Procedure, if a timely motion for rehearing is filed under Bankruptcy Rule 8022, the time to appeal for all parties to the Fourth Circuit runs from the entry of the order disposing of the motion.

A motion for rehearing must state with particularity each point of law or fact that the movant believes the District Court has overlooked or misapprehended and must argue in support of the motion. Oral argument is not permitted. Unless the District Court requests, no response to a motion for rehearing is permitted. Ordinarily, however, rehearing

will not be granted in the absence of such a request.

If a motion for rehearing is granted, the District Court may make a final disposition of the appeal without reargument, restore the case to the calendar for reargument or resubmission, or issue any other appropriate order.

The form and length of a motion for rehearing is addressed in Bankruptcy Rule 8022(b). Unless the District Court orders otherwise, a motion for rehearing must not exceed 15 pages.

STAY OF THE DISTRICT COURT JUDGMENT PENDING FURTHER APPEAL (Bankruptcy Rule 8025)

Unless the District Court orders otherwise, the judgment of the District Court is automatically stayed for 14 days after entry. In addition, a party may file a motion with the District Court to stay its judgment pending an appeal to the Fourth Circuit. The stay shall not exceed 30 days after the judgment is entered, except for cause shown. If a party obtains a stay pending appeal and that party files an appeal to the Fourth Circuit before the stay has expired, the stay continues until disposition by the Fourth Circuit. This continuation of the stay pending appeal to the Fourth Circuit does not apply to the 14-day automatic stay. A bond or other security may be required as a condition for granting or continuing a stay of the judgment. In addition, a bond or other security may be required if a trustee obtains a stay,

but not if a stay is obtained by the United States or its officer or agency or at the direction of any department of the United States government.

If the District Court enters a judgment affirming an order, judgment or decree of the Bankruptcy Court, a stay of the District Court's judgment automatically stays the Bankruptcy Court's order, judgment or decree for the duration of the appellate stay.

Bankruptcy Rule 8025(d) makes it clear that nothing provided in the Rule shall limit the power of the Fourth Circuit or any of its judges to (1) stay a judgment pending appeal; (2) stay proceedings while an appeal is pending; (3) suspend, modify, restore, vacate or grant a stay or an injunction while an appeal is pending; or (4) issue any order appropriate to preserve the status quo or the effectiveness of any judgment to be entered.

With respect to proceedings and procedures in the Fourth Circuit, counsel should refer to the Federal Rules of Appellate Procedure and the Local Rules and Internal Operating Procedures promulgated by the Fourth Circuit Court of Appeals.

APPENDIX 1

OFFICIAL FORM NO. 417A

Form 417A Notice of Appeal and Statement of Election

[Caption as in Form 416A, 416B, or 416D, as appropriate]

NOTICE OF APPEAL AND STATEMENT OF ELECTION

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s):

_____

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.	For appeals in a bankruptcy case and not in an adversary proceeding.
□ Plaintiff	□ Debtor
□ Defendant	□ Creditor
□ Other (describe)	□ Trustee
_____	□ Other (describe)
	_____

Part 2: Identify the subject of this appeal

1. Describe the judgment, order, or decree appealed from:
_____

2. State the date on which the judgment, order, or decree was entered: _____

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

1. Party: _____ Attorney: _____
_____
_____
_____

2. Party: _____ Attorney: _____
_____
_____
_____

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by

the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

□ Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Part 5: Sign below

_____ Date: _____

Signature of attorney for appellant(s) (or appellant(s) if not represented by an attorney)

Name, address, and telephone number of attorney (or appellant(s) if not represented by an attorney):

_____
_____
_____
_____

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

APPENDIX 2

OFFICIAL FORM NO. 424

Form 424 Certification to Court of Appeals by All Parties

[Caption as described in Fed. R. Bankr. P. 7010 or 9004(b), as applicable]

CERTIFICATION TO COURT OF APPEALS BY ALL PARTIES

A notice of appeal having been filed in the above-styled matter on _____ [*Date*], _____, _____, and _____, [*names of all the appellants and all the appellees, if any*], who are all the appellants [and all the appellees] hereby certify to the court under 28 U.S.C. § 158(d)(2)(A) that a circumstance specified in 28 U.S.C. § 158(d)(2) exists as stated below.

Leave to appeal in this matter:

□ is required under 28 U.S.C. § 158(a)

□ is not required under 28 U.S.C. § 158(a).

[*If from a final judgment, order, or decree*] This certification arises in an appeal from a final judgment, order, or decree of the United States Bankruptcy Court for the _____ District of _____ entered on _____ [*Date*].

[*If from an interlocutory order or decree*] This certification arises in an appeal from an interlocutory order or decree, and the parties hereby request leave to appeal as required by 28 U.S.C. § 158(a).

[*The certification shall contain one or more of the following statements, as is appropriate to the circumstances.*]

The judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for this circuit or of the Supreme Court of the United States, or involves a matter of public importance.

Or

The judgment, order, or decree involves a question of law requiring resolution of conflicting decisions.

Or

An immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken.

[*The parties may include or attach the information specified in Rule 8001.*]

Signed: [I*f there are more than two signatories, all must sign and provide the information requested below. Attach additional signed sheets if needed.*]

Attorneys for Appellant and Appellee (or Appellant and Appellee, if not represented by an attorney):	_____	_____
Printed names of signers:	_____	_____
Addresses:	_____ _____ _____	_____ _____ _____
Telephone numbers:	(___)____-_____	(___) ____-_____
Date:	_____/_____/_____ MM / DD / YYYY	_____/_____/_____ MM / DD / YYYY

APPENDIX 3

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
OFFICE OF THE CLERK

Felicia C. Cannon, Clerk of Court
Jarrett B. Perlow, Chief Deputy
[Choose a division] Elizabeth B. Snowden, Chief Deputy

[Date]

RE: [Case Name]
[USDC Case No]
[Bankruptcy Case No.]

Dear Counsel/Party:

The above-captioned bankruptcy appeal was docketed on [Date Appeal Docketed]. Briefs must be filed and served in accordance with Bankruptcy Rule 8018. Appellant's brief is due within thirty (30) days from the date the Designation of Record is docketed.

The case is subject to this Court's electronic filing requirements and procedures.

☐ You are not a registered District Court CM/ECF user. To register, go to the Court's web site: www.mdd.uscourts.gov and fill in the on-line registration form. Information about electronic filing procedures and requirements is available on

the web site. Any documents submitted for filing in paper format may be returned to you. The Court does not mail paper copies of orders and other documents which are filed electronically.

☐ One or more of the parties in this case is not represented by counsel ("*pro se*"). *Pro se* parties are to file and serve documents in paper format. The court will scan and electronically file any documents submitted by a *pro se* party unless a particular document is exempt from electronic filing. The scanned document shall constitute the official court record. The court will mail paper copies of any orders or other documents entered by the court to any *pro se* party. Counsel shall file electronically with the court and serve paper copies of all documents on any *pro se* party. Documents filed electronically must include a certificate of service stating when and how a paper copy was served on any *pro se* party.

Sincerely yours,

_____

Felicia C. Cannon, Clerk

cc: All counsel/parties

Bankruptcy Letter to Counsel (Rev. 04/2015)

Northern Division • 4228 U.S. Courthouse • 101 W. Lombard Street • Baltimore, Maryland 21201• 410-962-2600
Southern Division • 200 U.S. Courthouse • 6500 Cherrywood Lane • Greenbelt, Maryland 20770 • 301-344-0660

Visit the U.S. District Court's Web Site at www.mdd.uscourts.gov

APPENDIX 4

OFFICIAL FORM NO. 417C

Form 417C Certificate of Compliance with Rule 8015(a)(7)(B) or 8016(d)(2)

[*This certification must be appended to your brief if the length of your brief is calculated by maximum number of words or lines of text rather than number of pages.*]

Certificate of Compliance With Rule 8015(a)(7)(B) or 8016(d)(2)

This brief complies with the type-volume limitation of Rule 8015(a)(7)(B) or 8016(d)(2) because:

□ this brief contains [*state the number of*] words, excluding the parts of the brief exempted by Rule 8015(a)(7)(B)(iii) or 8016(d)(2)(D), or

□ this brief uses a monospaced typeface having no more than 10½ characters per inch and contains [*state the number of*] lines of text, excluding the parts of the brief exempted by Rule 8015(a)(7)(B)(iii) or 8016(d)(2)(D).

_____ Date:_____
Signature

Print name of person signing certificate of compliance:

_____