

2.03 RULES GOVERNING BANKRUPTCY APPEALS

(a) Practice in such bankruptcy appeals as may come before this district court shall be governed by Part VIII of the Rules of Bankruptcy Procedure, **and shall be handled by the Clerk in accordance with the attached procedures regarding the processing of bankruptcy appeals.**

PROCEDURES FOR PROCESSING BANKRUPTCY APPEALS TO THE DISTRICT COURT

1. Appeal in Bankruptcy Court. Once a Notice of Appeal is filed with the bankruptcy court, the appeal is usually processed to the U.S. Bankruptcy Appellate Panel (BAP). Under two circumstances, the appeal may come to the U.S. District Court.

a. Directly From Bankruptcy Court. An appeal may come to the district court directly from bankruptcy court if the party filing the appeal (Appellant) also files a separate statement of election with the bankruptcy court on the same date as the Notice of Appeal is filed. In this instance, the appeal will be processed directly to the district court. If the appellant does not file a separate statement of election, the appeal will be processed to the BAP.

b. From BAP. If the bankruptcy court has processed an appeal to the BAP, the opposing party (Appellee) has thirty (30) days from the filing of the Notice of Appeal to file objections to the jurisdiction of the BAP. If this is done, the BAP will forward the documents it has received to the district court.

2. Receipt of Appeal. When an appeal is processed to the district court from either the bankruptcy court or the BAP, the following documents should be included so that the district court can open the appeal. If these documents are not included, contact the bankruptcy court prior to opening the case at 916-498-5566.

a. Transmittal Form. This form should include the debtor's name, the bankruptcy court number, adversary number (if any), bankruptcy judge name, date Notice of Appeal was filed, date of entry of order appealed from, date bankruptcy was originally filed, date Notice of Appeal mailed to parties, date of transmittal to BAP or the district court, and the name of clerk who did the transmittal.

b. Copy of Notice of Appeal.

c. Copy of Appealed Order or Judgment.

d. Copy of Bankruptcy Court Docket.

e. Certificate of Mailing (service list).

3. Opening the Appeal in Intake. When you receive a notice of appeal from either the bankruptcy court or the BAP, the following steps should be taken to open the case and notify the parties how to proceed with the appeal. Use the Appeal Checklist located in intake.
(ATTACHMENT A)

a. Assigning a Judge. Randomly assign a district judge only to the case by using deck **2. Bankruptcy** in the Case Assign System.

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b. Send Notice to Bankruptcy Court. Complete and send two (2) copies of the **Notice to Bankruptcy Court** to the bankruptcy court. Make sure you fill out the form completely. (**ATTACHMENT B**)

c. Send Opening Letter to Parties. The district court judge courtroom deputy, clerk of the bankruptcy court, clerk of the BAP and the bankruptcy court judge who was assigned to the action. Make sure and fill out the letter completely, including all case numbers. (**ATTACHMENT C**)

4. Open Case in ICMS. In ICMS open the action utilizing the following case opening information:

Civil Case Opening		
Date filed : 01/31/96	Jurisdiction : 3	Nature of Suit : 422
Origin : 1	Diversity Plf :	Diversity Dft :
Class action : n	\$ Demand (000):	County : 06067
Jury Demand :	Fee Date : 01/31/96	Fee Status : wv
Cause: 28:0158 28:0158 Notice of Appeal re Bankruptcy Matter (BAP)		
Case subtype : bk	Docket clerk : clerk	Arbitration :
Last Doc'mt #: 1	Reopen Origin :	
Pflag1 :	Pflag2 :	Pflag3 :
Pflag4 :	Pflag5 :	Pflag6 :
Presider Code: 7213 Levi	, David	F
Referral Code:		
Dkt# in other court: 96-12345	Other court: USBC EDCA	

Note: All **bolded** information will be the same whenever a bankruptcy appeal is opened. Use the date that we receive the appeal as the date filed on case opening, this should also be the fee date. You will only enter a Presiding judge, no referral, and make sure and put in the bankruptcy court docket number, adversary number and BAP number in the other court field. You may enter multiple numbers. When adding parties, use the party type "a" for the Appellant and "e" for the Appellees.

a. Docketing Pleadings. At case opening, say "no" to docketing the lead event. Your lead event will be **ntcbk**. or Notice of Filing Bankruptcy Appeal. Docket the Opening Letter as **cltr**. and text in, "Opening."

b. Forward File to Courtroom Deputy. Forward the file to the district court judge courtroom deputy after opening, so they may ensure that the action has been calendared

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for thirty (30) days to ensure we have received the certificate of record, and sent the briefing schedule.

5. **Briefing Schedule.** Once the parties to the action have filed all necessary documents with the bankruptcy court, including: designation of record, statement of issues on appeal, and notice regarding the ordering of transcripts, and the court reporter has filed the transcripts with the bankruptcy court, the bankruptcy court will send the district court the Certificate of Record. Upon receipt of the Certificate of Record, do the following:
 - a. **Docket the Certificate of Record in ICMS.** Docket the Certificate of Record received from the bankruptcy court as **certifrec**. Edit the text to reflect that the COR was received from the bankruptcy court, not sent to the Ninth Circuit.
 - b. **Docketing the Briefing Schedule in ICMS.** Docket the Briefing Schedule in ICMS as **bkbrsched.**, this event will generate a proof of service. Make sure and include the bankruptcy court, bankruptcy judge and the district court judge courtroom deputy on the proof. **(ATTACHMENT D)**
 - c. **Sending the Briefing Schedule.** Once you have received and docketed the Certificate of Record from the bankruptcy court and docketed the Briefing Schedule, pull the file and make sure you are serving all counsel, the district court judge courtroom deputy, clerk of the bankruptcy court and the bankruptcy judge who was assigned to the action. The briefing schedule will include the time limits for the parties in the action to file their briefs with the court.
 - d. **Forward File to Courtroom Deputy.** Forward the file to the district court judge courtroom deputy after you have sent the briefing schedule, so they may ensure the action has been calendared for sixty (60) days to make sure they have received notification that the action is ready for oral argument.
6. **Docketing Subsequent Pleadings.** Once the briefing schedule has gone out, you may receive the following subsequent pleadings in the action filed by the parties: **abr.** - Appellant's Brief, **ebr.** - Appellee's Brief, **arplybr.** - Appellant's Reply Brief, **bkxrec.** - Excerpts of Record.
7. **Oral Argument.** Once all the briefs and excerpts have been filed in the case, the district court judge courtroom deputy may set the case for oral argument. Docket this notice as a **cltr.** and set an **in court hrg** in schedules.
8. **Dispositional Order.** When a dispositional order is issued in the case, make sure and serve all parties, the clerk of the bankruptcy court and the bankruptcy judge who was assigned the action. Make sure the document contains all other court information.

BANKRUPTCY APPEAL CHECKLIST

(Place Inside Front Cover of Case File)

_____/_____
Appellant,
vs.
_____/_____
Appellee.

No. CV-S-_____
No. BAP-_____
No. BK -_____
No. ADV-_____

I. APPEAL OPENING INFORMATION **DATE** **INITIALS**

- A. APPEAL RECEIVED FROM:
BANKRUPTCY COURT / BAP
(CIRCLE ONE) _____
- B. NOTICE TO BK. COURT SENT
(2 COPIES & COPY OF APPEAL) _____
- C. OPENING LETTER SENT TO PARTIES
(INCLUDE COPY TO BK. CT., BAP,
BK. JUDGE, CRD, ORIGINAL IN FILE) _____
- D. CASE OPENED IN ICMS _____
- E. FILE FORWARDED TO DISTRICT COURT
JUDGE COURTROOM DEPUTY
CRD - (CALENDAR FOR 30 DAYS TO
ENSURE BRIEFING SCHEDULE SENT) _____
- F. FILE RECEIVED BY JUDGE _____

II. BRIEFING SCHEDULE INFORMATION **DATE** **INITIALS**

- A. CERTIFICATE OF RECORD RECEIVED
FROM BANKRUPTCY COURT _____
- B. BRIEFING SCHEDULE SENT TO PARTIES
(INCLUDE COPY TO BK. CT., BK. JUDGE,
CRD, ORIGINAL IN FILE) _____
- C. FILE FORWARDED TO DISTRICT COURT
JUDGE COURTROOM DEPUTY
CRD - (CALENDAR 60 DAYS TO CHECK ON
BRIEFING SCHEDULE) _____

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
650 Capitol Mall, Room 2546
Sacramento, CA 95814
(916) 498-5415**

In re:

Debtor	)	District Court Case Number
	)	CV. _____
)	
	)	Bankruptcy Court Case Number
	)	NO. _____
)	
Appellant,	)	Adversary Proceeding Number
	)	NO. _____
)	
v.	)	Bankruptcy Appellate Panel Number
	)	NO. _____
)	
Appellee.)	
)	
)	

**NOTICE TO
BANKRUPTCY COURT**

The district court has received and docketed the notice of appeal, attached. Our district court case number is indicated above for your information.

When the bankruptcy court issues a Certificate of Record, please attach a copy of the Designation of Record, Statement of Issues filed by the parties and a current copy of the bankruptcy court docket starting at the time the order on appeal was filed.

If completion of the record is delayed, please advise as to the cause of the delay by completing the checklist below and returning a copy of this letter to the district court:

- A) REASONS WHY THE RECORD HAS NOT BEEN COMPLETED. THE FOLLOWING ITEMS HAVE NOT BEEN FILED:
- | | |
|---|---|
| 1. ___ No Filing Fee Paid | 2. ___ No Designation of Record Filed |
| 3. ___ No Statement of Issues | 4. ___ No Notice Regarding Transcript Filed |
| 5. ___ No Reporter's Transcript(s) | 6. ___ No Transcript Fee Paid |
| 7. ___ Extension of Time Granted to Reporter. New Deadline: _____ | |
| 8. ___ Other: _____ | |

- B) DEPUTY CLERK PROCESSING APPEAL
- Name: _____
- Phone: _____
- Date: _____

JACK L. WAGNER, CLERK
UNITED STATES DISTRICT COURT

Dated: _____

By: _____
Deputy Clerk

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
650 Capitol Mall, Room 2546
Sacramento, CA 95814
(916) 498-5415**

In re:

Debtor	)	District Court Case Number
	)	CV. _____
)	
	)	Bankruptcy Court Case Number
	)	NO. _____
)	
Appellant,	)	Adversary Proceeding Number
	)	NO. _____
v.)	
	)	Bankruptcy Appellate Panel Number
	)	NO. _____
Appellee.)	
)	

OPENING LETTER

YOU ARE HEREBY NOTIFIED that your appeal from the bankruptcy court has been received in the district court and assigned the above district court case number. All pleadings filed in the district court should be in the form of an original plus two copies.

After a Notice of Appeal has been filed, the parties' next step in prosecuting this appeal is compliance with F.R.B.P. 8006 and 8007. These rules require the appellant to file within ten (10) days a designation of record, statement of issues on appeal and a notice regarding the ordering of transcripts **with the bankruptcy court**. Under these rules, the appellee may also file a supplemental designation of record and order transcripts. The party ordering transcripts must make satisfactory arrangements for payment of their costs. If transcripts are not to be ordered, appellant is required to file with the bankruptcy court a notice stating none are required.

Parties should note that the designation of record under F.R.B.P. 8006 is a necessary procedural step in prosecuting an appeal and the parties may not later include in their excerpts of record documents which have not been designated. The record and bankruptcy file will remain with the clerk of the bankruptcy court and the district court will review only those items in the record which counsel reproduces and includes in the excerpts of record filed at the time of the briefs, although under some circumstances the district court may call up the formal record.

Opening Letter, Page 2

It is the parties' responsibility to monitor the appeal to ensure transcripts are timely filed and the record is completed in a timely manner. Under F.R.B.P. 8007(a), the court reporter is required to file transcripts within thirty (30) days of receipt of the parties request, unless an extension has been granted.

After the record is complete, **the clerk of the bankruptcy court** will send a Certificate of Record (COR) to the clerk of the district court. Upon receipt of the COR, the district court will issue the briefing schedule. The briefing schedule will contain time deadlines and instructions regarding filing of briefs with the district court. Parties should be aware the time periods set forth in the briefing schedule are relatively short and the district court may require a showing of good cause for any extensions of time.

Once briefing is complete, the appeal will be set for oral argument before the presiding district court judge.

JACK L. WAGNER, CLERK
UNITED STATES DISTRICT COURT

Dated: _____

By: _____
Deputy Clerk

cc: All Counsel
Courtroom Deputy
Clerk, Bankruptcy Court
Clerk, Bankruptcy Appellate Panel
Hon. _____, Bankruptcy Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
650 Capitol Mall, Room 2546
Sacramento, CA 95814
(916) 498-5415

In re:

Debtor	)	District Court Case Number
	)	CV. _____
)	
	)	Bankruptcy Court Case Number
	)	NO. _____
)	
Appellant,	)	Adversary Proceeding Number
	)	NO. _____
v.)	
	)	Bankruptcy Appellate Panel Number
Appellee.	)	NO. _____
)	
	)	BRIEFING SCHEDULE

YOU ARE HEREBY NOTIFIED the clerk of the bankruptcy court has issued the Certificate of Record, certifying that the record on appeal is complete. This certificate was received and docketed by the district court on _____.

Pursuant to Federal Rule of Bankruptcy Procedure 8009, the **appellant's opening brief and excerpts of record** are due, filed in the district court, within **fifteen (15) days**, of the above date.

The **appellee's opening brief** is due, filed in the district court, within **fifteen (15) days** after service of appellant's brief.

The appellant may file a reply brief with the district court, within **ten (10) days** after service of appellee's brief.

Once all briefs have been submitted, the appellant is to notify the court in writing, within **ten (10) days** after service of appellant's reply brief, that the appeal is ready for oral argument.

Briefing Schedule, Page 2

All briefs and supporting documents filed with the district court should contain the following information and are required to be in the following format:

Briefs. The content of the briefs must comply with the requirements of: Bankruptcy Appellate Panel Rules 4 and 5; Federal Rules of Bankruptcy Procedure 8009 and 8010; and Federal Rules of Appellate Procedure 32 (a). The length of opening briefs of appellant and appellee shall not exceed thirty (30) pages. The appellant's reply brief, if any, shall not exceed twenty (20) pages.

NOTE ON FORM AND NUMBER OF BRIEFS: The district court needs only the original plus one copy of all documents. Also, these documents shall not have a cover, rather they should comply with Local Rule 130 (i.e., 8 1/2" by 11" white pleading paper, bound in the upper left corner and two hole punched.)

Excerpts of Record. The bankruptcy court record, including transcripts, is not forwarded to the district court unless requested by the district court. The parties are expected to include copies of all relevant parts of the record in their excerpts. In particular appellant's brief shall include at least: the complaint and answer(s) or other equivalent operative pleadings; the pretrial order, if any; the judgment or order from which the appeal is taken; other orders sought to be reviewed, if any; any supporting opinion, findings of fact or conclusions of law filed or delivered orally by the trial court (citations, if opinion is published); the motion and response upon which the court rendered judgment, if any; and the trial court docket sheet. Copies of any portion of a transcript referred to in a brief must be included in the excerpts.

Index. Each party should prepare an index to accompany the excerpts of record. The pages of the excerpts of record should be sequentially numbered and each document should be indicated with a tab. The index should refer to the record by tab and page number.

Notice Appeal Ready for Oral Argument. Counsel for appellant shall submit to the assigned district court judge's courtroom deputy, a notice that all documents are complete and the appeal may be calendared for argument. Appellant is required to submit an original and one (1) copy of this document within ten (10) days after service of the appellant's reply brief.

JACK L. WAGNER, CLERK
UNITED STATES DISTRICT COURT

Dated: _____

By: _____
Deputy Clerk

cc: All Counsel
Courtroom Deputy
Clerk, Bankruptcy Court
Hon. _____, Bankruptcy Judge