

1 Bankruptcy Law Manual § 2:47 (5th ed.)

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Chapter 2. Jurisdiction; Venue; Procedure; Jury Trials; Standing; Appeals

§ 2:47. Appeals

References

West's Key Number Digest

West's Key Number Digest, [Bankruptcy](#) 2041.1

West's Key Number Digest, [Bankruptcy](#) 3761

Treatises and Practice Aids

Aaron, [Bankruptcy Law Fundamentals](#) §§ 3:19 to 3:21

Drake, [Bankruptcy Practice for the General Practitioner](#) §§ 4:14 to 4:19 (3d ed.)

Williams, [Bankruptcy Practice Handbook](#) § 19:1 (2d ed.)

Friedland, [Commercial Bankruptcy Litigation](#), Chapter 12 (2d ed.)

Murphy, [Creditors' Rights in Bankruptcy](#) § 2:9 (2d ed.)

An appeal from a bankruptcy court decision may go through several levels. Unless a circuit court has permitted direct appeal, the first level of appeal is either to the district court in which the bankruptcy judge sits or to the Bankruptcy Appellate Panel in the circuit in which the bankruptcy court is located. From there an appeal may be taken to the court of appeals in the circuit where the bankruptcy court sits. Third, on petition for certiorari, an appeal may be taken to the U.S. Supreme Court, subject to the Supreme Court's grant of review.

Appeals from a bankruptcy court decision to a district court, Bankruptcy Appellate Panel, or circuit court are governed by § 158 of Title 28.¹ The rules applicable to these appeals at the district court and Bankruptcy Appellate Panel level are set forth in Part VIII of the Federal Rules of Bankruptcy Procedure² and local rules or operating procedures which the district court or appellate panel may have published.³ Appeals to the circuit courts are governed by the Federal Rules of Appellate Procedure supplemented by the circuit's local rules and procedures, if any.⁴

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All appeals are also governed by a well-established proposition that, absent the most extreme circumstances, legal theories not raised squarely in the lower courts, cannot be broached for the first time on appeal.⁵ Thus, if there is any chance of an appeal, counsel must raise all theories of recovery or defense or waive the right to appeal them after trial.

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Footnotes

- * United States Bankruptcy Judge, District of Massachusetts. Chief Judge, United States First Circuit Bankruptcy Appellate Panel. Fellow, American College of Bankruptcy.
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- *** Career Law Clerk to the Honorable Michael E. Ridgway, Chief United States Bankruptcy Judge, District of Minnesota and Former Career Law Clerk to the Honorable Nancy C. Dreher.
- 1 28 U.S.C.A. § 158(a),(b)(1),(d)(1). See 28 U.S.C.A. § 158(c) (“An appeal under subsections (a) [to the district court] and (b) [to the Bankruptcy Appellate Panel] shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeal from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.”).
- 2 See [Fed. R. Bankr. P. 8001 to 8020](#).
- 3 See, e.g., U.S. Bankruptcy Appellate Panel of the Tenth Circuit Local Rules, Court Rules for the U.S. Bankruptcy Appellate Panel of the Ninth Circuit, Internal Operating Procedures of Bankruptcy Appellate Panel of the Eighth Circuit. See also [Fed. R. Bankr. P. 8018](#) which both authorizes and limits the authority of circuit councils, with authorized Bankruptcy Appellate Panels, and the district courts to promulgate and to enforce, by way of sanction, failure to comply with such local rules.
- 4 [Fed. R. App. P. 1 to 48](#). See, in particular, [Fed. R. App. P. 6](#) (Appeal in a Bankruptcy Case from a Final Judgment, Order or Decree of a District Court or Bankruptcy Appellate Panel). For procedures relating to appeals to the Supreme Court of the U.S., see Rules of the Supreme Court of the U.S. See [In re Taumoepeau](#), 523 F.3d 1213, [Bankr. L. Rep. \(CCH\) P 81243 \(10th Cir. 2008\)](#) (Federal Rules of Appellate Procedure apply to an appeal from the Bankruptcy Appellate Panel to the circuit court and the timeliness of an appeal is measured by reference to [Fed. R. App. P. 4\(a\)\(7\)](#), and by incorporation, [Fed. R. Civ. P. 58](#), which requires the Bankruptcy Appellate Panel to file a separate document; failure to record the Bankruptcy Appellate Panel judgment as a separate document extended the time to appeal by 150 days); [In re Empresas Martinez Valentin Corp.](#), 948 F.3d 448 (1st Cir. 2020) (time for appealing the bankruptcy court's order began to run 150 days after the bankruptcy court's opinion and order, even though the bankruptcy court had not yet quantified its award of attorney's fees for the prevailing party). See also [In re Central Illinois Energy Cooperative](#), 847 F.3d 873 (7th Cir. 2017) (on appeal from district court's affirmance of a bankruptcy court order, remand to lower courts to allow bankruptcy court to take action that would otherwise be barred by appeal requires party seeking to have matter remanded to obtain indicative ruling from both bankruptcy court and district court that they are inclined to grant relief, citing [Fed. R. App. P. 12.1](#));.
- 5 [In re Physicians Reliance Ass'n, Inc.](#), 415 Fed. Appx. 140 (11th Cir. 2011) (debtor-appellant waived claim of insufficient service of process when debtor-appellant failed to specifically raise the claim in district court); [In re Net-Velazquez](#), 625 F.3d 34, 53 [Bankr. Ct. Dec. \(CRR\)](#) 243, 64 [Collier Bankr. Cas. 2d \(MB\)](#) 1252, [Bankr. L. Rep. \(CCH\) P 81876 \(1st Cir. 2010\)](#) (finding that appellant bank had waived the opportunity to use three of its legal theories before the bankruptcy court because it had not raised them before the lower court and no extraordinary circumstance warranted allowing the theories); [In re Brown](#), 446 B.R. 270 (B.A.P. 8th Cir. 2011) (court would not consider challenges to trustee's motion to dismiss nor creditor's motion for stay relief where debtor failed to object to motions in bankruptcy court). But see [In re Lett](#), 632 F.3d 1216, 54 [Bankr. Ct. Dec. \(CRR\)](#) 81, [Bankr. L. Rep. \(CCH\) P 81934 \(11th Cir. 2011\)](#) (neither undersecured creditor's

failure to obtain stay pending appeal of order "cramming down" debtor's proposed Chapter 11 plan over creditor's objection nor fact that some payments had been made to other secured creditors under plan was such as to equitably moot undersecured creditor's appeal).

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