1 Bankruptcy Law Manual § 2:49 (5th ed.)

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

§ 2:49. Appeals—The finality requirement

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

Steinberg, Bankruptcy Litigation §§ 9:14 to 9:19 (2d ed.)
Drake, Bankruptcy Practice for the General Practitioner § 4:16 (3d ed.)
Williams, Bankruptcy Practice Handbook § 19:8 (2d ed.)
Friedland, Commercial Bankruptcy Litigation § 12:2 (2d ed.)

28 U.S.C.A. § 158(a)(1) provides that the district courts of the U.S. have jurisdiction to hear appeals from final judgments, orders, and decrees of a bankruptcy court.[1] This same limitation applies to appeals of a bankruptcy court decision to a Bankruptcy Appellate Panel.[2] Interlocutory orders of a bankruptcy court are therefore ordinarily not appealable to a district court or to a Bankruptcy Appellate Panel until the conclusion of the matter.[3] An exception is an interlocutory order that increases or decreases the time limits for filing or confirming a plan of reorganization set forth in § 1121(d) of the Bankruptcy Code.[4] All other interlocutory orders are appealable only with leave of the district court or the Bankruptcy Appellate Panel to which the appeal is taken.[5]

Under 28 U.S.C.A. §§ 1291 and 1292, courts of appeals have jurisdiction over appeals from final orders of the district courts, and in some cases, interlocutory orders.[6] 28 U.S.C.A. § 158(d)(1) likewise provides that the courts of appeals have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered by the district court or a Bankruptcy Appellate Panel acting as appellate courts in a bankruptcy appeal.[7] As previously discussed, since the Supreme Court's decision in *Connecticut National Bank v. Germain*, it has been clear that appeal to the circuit court of nonfinal interlocutory orders of a district court

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with respect to a bankruptcy appeal is available under 28 U.S.C.A. § 1292(b) if the district court makes the requisite findings on importance and the application for review is filed in a timely fashion.[8]

There is a vast body of law on the question of what is a final order that is appealable as a matter of right. Courts say that a decision is final for purposes of appeal if it "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment."[9] An order is considered final if it completely resolves all of the issues pertaining to a discrete dispute within the larger case, including issues as to the proper relief.[10] Many courts have said that, because bankruptcy cases do not resemble a typical free-standing lawsuit, the standard for finality is more flexible in bankruptcy.[11] Courts have held that an order is final if it confirms or denies confirmation of a plan of reorganization and dismisses the case,[12] grants or denies relief from the automatic stay,[13] authorizes the sale of property,[14] allows or sets the terms of an extension of credit,[15] or approves the rejection or assumption of an executory contract.[16] An order granting or denying approval of a disclosure statement has been held not to be final because it does not resolve any dispute between the parties.[17] Orders granting and denying an application for appointment of a professional may be treated differently.[18] Courts differ regarding whether orders granting or denying motions to disqualify professionals are final.[19] Also, there is little agreement on whether an order directing the appointment of a trustee in bankruptcy or denying such appointment or removing a trustee is considered final.[20] There is also little agreement on whether an order denying or granting a motion for an order directing the appointment of an official creditors' committee is final.[21] There are many other specific examples regarding what is or is not a final order for purposes of appeal as a matter of right.[22] The foregoing discussion lists only a few of them.

An order granting summary judgment on all issues in the case is a final appealable order.[23] An order granting partial summary judgment, however, ordinarily is not[24] because the Federal Rules require that, where there are multiple claims or parties in a case and the trial court grants summary judgment with respect to only one or more, but not all, of the issues and claims raised in the case, the trial court should direct the entry of judgment only after making an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.[25] In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all of the claims or the rights and liabilities of fewer than all of the parties and does not terminate the action as to some of the claims or parties, is not final.[26] Thus, for example, if the parties are involved in an adversary proceeding which contains multiple counts or parties and the bankruptcy court grants partial summary judgment as to some, but not all, of the claims or as to some, but not all, of the parties, and does not make the express finding and direction, there is no judgment from which an appeal can be taken as a matter of right.[27]

A district court or Bankruptcy Appellate Panel has discretion to grant leave to appeal a non-final decision under one of three theories: the collateral order doctrine, application of the criteria governing § 158(a)(3) review of interlocutory orders, or the *Forgay-Conrad* doctrine.[28]

An interlocutory order may be appealed pursuant to the collateral order doctrine where the decision conclusively determined an important legal issue completely separate from the merits of the action and is effectively unreviewable on appeal from a final judgment.[29] A decision is not reviewable as a collateral order unless it satisfies all these requirements.[30] Courts say that this is a narrow exception to the final judgment rule and should be limited to review of orders affecting rights that will be irretrievably lost in the absence of an immediate appeal.[31] The possibility that a ruling may be erroneous and may impose additional litigation expense is not sufficient to set aside the finality requirement.[32]

In order for a party to obtain review by the district court or the Bankruptcy Appellate Panel of an interlocutory order of the bankruptcy court under 28 U.S.C.A. § 158(a)(3), the party must show that the case involves a controlling issue of law over which there is substantial ground for difference of opinion and that an immediate appeal would materially advance the ultimate

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termination of the litigation.[33] It is within the discretion of the district court or the Bankruptcy Appellate Panel to grant a motion for leave to appeal on an interlocutory basis, but these requests are rarely granted.[34] Appeals from the district court of interlocutory orders can be taken pursuant to 28 U.S.C.A. § 1292.[35] Section 1292(a) lists several types of interlocutory orders, including district court orders relating to injunctions, that are appealable in spite of the fact that they are interlocutory.[36] Section 1292(b) permits a district court to make a finding that an interlocutory order, not otherwise appealable to the court of appeals, includes a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.[37] The prospective appellant must then apply for discretionary review by the court of appeals within 10 days of the entry of the order.[38] The filing of the application does not stay the proceedings in the district court unless the court of appeals or the district judge grants a stay.[39]

The third concept, labeled the *Forgay-Conrad* doctrine, has been employed to permit appellate jurisdiction over interlocutory orders when "irreparable injury" will occur to the aggrieved party by delaying appellate review.[40] "The factor crucial to the application of this exception is the presence of the possibility of irreparable injury to losing parties if appellate review is delayed until the litigation is over … Usually this will involve a court order which, although interlocutory, orders the immediate disposition and delivery of property."[41]

When an order is not within the appellate jurisdiction of the court, for example, where appeal from the order is foreclosed by statute,[42] or because the order is not final or reviewable as an interlocutory order, mandamus may also be an available remedy. Federal courts have the general power to issue writs, including writs of mandamus, requiring lower courts to take action.[43] However, a writ of mandamus is an extraordinary remedy, the issuance of which is generally committed to the sound discretion of the issuing court.[44] Generally, a writ of mandamus will only issue if the lower court did not have the power to enter the order and then only if the party seeking the writ establishes that its right to the writ is clear and indisputable.[45] The Supreme Court has stated that only exceptional circumstances amounting to a judicial usurpation of power will justify the invocation of this extraordinary remedy, and that, among the conditions for the issuance of a writ of mandamus, the party seeking the writ must establish that without the writ the party has no other adequate means to obtain relief.[46] Courts say that the writ should issue only where there is some blatant or unconscionable misstep by the lower court and remedy is needed.[47] Each case turns on its facts.

For example, in *In re Federal Mogul-Global, Inc.*,[48] the Third Circuit held that it would treat as a request for mandamus the plaintiffs' appeal from an order of a district court refusing to transfer thousands of asbestos-related personal injury cases against nondebtor defendants to the federal district court where numerous asbestos-related bankruptcies were venued. It is well established that orders transferring or refusing to transfer a case are interlocutory and not appealable as a matter of right or on an interlocutory basis. The circuit court held that mandamus would not lie because the plaintiffs could not meet the stringent requirements for issuance of such an order even though there was considerable conflicting authority on the question of whether the bankruptcy court had correctly determined that it did not have "related to" jurisdiction of the removed cases. The plaintiffs had failed to show that the district court had committed a clear error of law approaching the magnitude of an unauthorized exercise of judicial power.[49]

Conversely, in *In re Canter*,[50] the Ninth Circuit Court of Appeals granted appellants' alternative request to treat their appeal as a petition for a writ of mandamus, noting that lack of jurisdiction to hear the appeal did not deprive the court of the power to exercise mandamus jurisdiction. The court adopted a five-factor test for determining whether mandamus should be granted. The factors are whether the petitioner has no other adequate means, such as a direct appeal, to obtain the relief he or she desires; the petitioner will be damaged or prejudiced in a way not correctable on appeal; the district court's order is clearly erroneous as a matter or law; the district court's order is an oft repeated error or manifests a persistent disregard of the federal rules; and the district court's order raises new and important problems or legal issues of first impression.[51] Because the district court's sua sponte order which withdrew the reference to the bankruptcy court of proceedings in a Chapter 13 case would leave the

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appellants in limbo with no ability to enforce an unlawful detainer order to obtain their property while someone else occupied it without paying rent for a period of two years, the court of appeals issued a writ of mandamus.

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Footnotes

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1 28 U.S.C.A. § 158(a)(1). In In re Wiersma, 483 F.3d 933, 48 Bankr. Ct. Dec. (CRR) 15 (9th Cir. 2007), for additional opinion, see, 227 Fed. Appx. 603 (9th Cir. 2007), the court of appeals ruled that a Bankruptcy Appellate Panel, which as a matter of law erred in determining that the order appealed from was not final, could not later correct its error using its inherent power to correct its own mistakes or because of unique circumstances; the Bankruptcy Appellate Panel decision to revisit a previously dismissed order also violated the law of the case doctrine and was error. See also In re Odyssey Contracting Corp., 944 F.3d 483 (3d Cir. 2019), cert. denied, 140 S. Ct. 2806, 207 L. Ed. 2d 143 (2020) (a party that agrees to resolve and end a case—and thus gives up its right to press its claims or defenses in exchange for finality—should not be left guessing whether the opposing party can appeal; rather, the party seeking to appeal must make its intent to do so clear at the time of the stipulation).

2 28 U.S.C.A. § 158(b)(1) (authorizing the creation of Bankruptcy Appellate Panels "to hear and determine, with the consent of all of the parties, appeals under subsection (a)"); 28 U.S.C.A. § 158(c)(2) ("An appeal under subsections (a) [to the district court] and subsection (b) [to the Bankruptcy Appellate Panel] of this section shall be taken in the same manner as appeals in civil proceedings generally taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.").

3 See, e.g., Franklin v. District of Columbia, 163 F.3d 625, 629–30, 42 Fed. R. Serv. 3d 1013 (D.C. Cir. 1998) (a final decision must determine "who is entitled to what from whom" and an order that only determines liability without determining the remedy is not a final order); In re Zahn, 367 B.R. 654, 656 (B.A.P. 8th Cir. 2007), rev'd on other grounds, 526 F.3d 1140, 59 Collier Bankr. Cas. 2d (MB) 1110, Bankr. L. Rep. (CCH) P 81242 (8th Cir. 2008) ("The prohibition against immediate appeal of most pretrial and trial orders established by the final judgment rule is offset by the rule that once appeal is taken from a truly final judgment that ends the litigation, earlier rulings generally can be reviewed." (quoting 15A Charles Alan Wright, Arthur R. Miller, & Edward H. Cooper, Federal Practice and Procedure § 3905.1 (2d ed. 1992)). And see In re Salem, 465 F.3d 767, Bankr. L. Rep. (CCH) P 80740, 71 Fed. R. Evid. Serv. 518 (7th Cir. 2006) (disapproved of by, Matter of Anderson, 917 F.3d 566, 66 Bankr. Ct. Dec. (CRR) 238 (7th Cir. 2019)) (as a general rule, the failure to file an interlocutory appeal does not waive the ability to have an issue reviewed upon final appeal).

4 28 U.S.C.A. § 158(a)(2). The 2005 Act made significant changes to § 1121(d) of the Code by limiting the bankruptcy court's discretion to extend the debtor's exclusivity for filing or confirming a plan, but Congress left intact the right to immediately appeal such orders.

5 28 U.S.C.A. § 158(a)(3); 28 U.S.C.A. § 158(b)(1) (incorporating all of § 158(a)); 28 U.S.C.A. § 158(c)(2).

6 28 U.S.C.A. § 1291 ("The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States [with some listed exceptions]."); 28 U.S.C.A. § 1292 (specifying circumstances under which a court of appeals can hear an appeal from an interlocutory order in general). See Klestadt & Winters, LLP v. Cangelosi, 672 F.3d 809, 56 Bankr. Ct. Dec. (CRR) 34, Bankr. L. Rep. (CCH) P 82213 (9th Cir. 2012) (finality rules of §

1291 apply when a district court has withdrawn the reference and is sitting as a court of original jurisdiction; a sanction order is not a final order and is not appealable until the end of the case).

7 28 U.S.C.A. § 158(d)(1). Compare In re Tri-Valley Distributing, Inc., 533 F.3d 1209, 50 Bankr. Ct. Dec. (CRR) 58 (10th Cir. 2008) (following the line of cases that hold that finality for purposes of appeal to the circuit court is based on whether the BAP or district court decision can be considered final and not on whether the bankruptcy court order was a final order), with In re M & S Grading, Inc., 526 F.3d 363, 368, 49 Bankr. Ct. Dec. (CRR) 265, 44 Employee Benefits Cas. (BNA) 1351, Bankr. L. Rep. (CCH) P 81254 (8th Cir. 2008) ("Our jurisdiction therefore depends on whether the bankruptcy court order which the plans seek to appeal was a final appealable order."); In re Eastport Associates, 935 F.2d 1071, 1075, Bankr. L. Rep. (CCH) P 74021 (9th Cir. 1991) ("When a bankruptcy court enters a final order, a district court's order affirming or reversing that order is also final."); Matter of Marin Motor Oil, Inc., 689 F.2d 445, 449, 9 Bankr. Ct. Dec. (CRR) 960, 7 Collier Bankr. Cas. 2d (MB) 470 (3d Cir. 1982) (rejected by, In re Goldblatt Bros., Inc., 758 F.2d 1248, Bankr. L. Rep. (CCH) P 70373 (7th Cir. 1985)) and (rejected by, In re Bowman, 821 F.2d 245, Bankr. L. Rep. (CCH) P 71922 (5th Cir. 1987)) ("[W]hen the bankruptcy court issues what is indisputably a final order, and the district court issues an order affirming or reversing, the district court's order is also a final order").

An order by the Bankruptcy Appellate Panel or the district court remanding for further proceedings (other than those which are purely ministerial) is generally considered interlocutory in nature. See, e.g., Bullard v. Blue Hills Bank, 575 U.S. 496, 135 S. Ct. 1686, 191 L. Ed. 2d 621, 60 Bankr. Ct. Dec. (CRR) 258, 73 C.B.C. 1492, Bankr. L. Rep. (CCH) P 82793 (2015) (bankruptcy court's order denying confirmation of a proposed repayment plan with leave to amend is not a "final" order that the debtor can immediately appeal); Hazelton v. Board of Regents for the University of Wisconsin System, 952 F.3d 914, 375 Ed. Law Rep. 93, Bankr. L. Rep. (CCH) P 83501 (7th Cir. 2020) (district court's order that alleged debt, which arose out of university's decision to allow debtor to take classes on credit, was not student loan debt and remanding for determination of whether sanctions should be imposed, was not final, appealable order); In re Marino, 949 F.3d 483, Bankr. L. Rep. (CCH) P 83489 (9th Cir. 2020), cert. denied, 141 S. Ct. 1683, 209 L. Ed. 2d 463 (2021) (circuit court lacked jurisdiction over a loan servicer's appeal from the BAP's order affirming bankruptcy court orders imposing $119,000 civil contempt sanction for violation of discharge injunction and remanding to the bankruptcy court for additional findings on punitive damages; remand was more than ministerial); Bank of New York Mellon v. Watt, 867 F.3d 1155, 64 Bankr. Ct. Dec. (CRR) 136, Bankr. L. Rep. (CCH) P 83141 (9th Cir. 2017) (court of appeals lacked jurisdiction to review district court's decision vacating the bankruptcy court's order confirming debtors' Chapter 13 plan and remanding the matter to the bankruptcy court; the decision was not final and appealable, as it did not finally dispose of any discrete dispute within the bankruptcy case, and the creditors who sought appeal failed to request certification of an interlocutory appeal); Ashmore v. CGI Group, Inc., 860 F.3d 80, 64 Bankr. Ct. Dec. (CRR) 71, 2017 I.E.R. Cas. (BNA) 211972 (2d Cir. 2017) (because the trustee had been substituted as the plaintiff in a whistleblower action and the district court proceedings were not yet concluded, the dismissal of the action as to the debtor was not a final order); In Matter of Ferguson, 834 F.3d 795, 63 Bankr. Ct. Dec. (CRR) 3 (7th Cir. 2016) (district court's order reversing bankruptcy court's decision to apply marshaling doctrine retroactively, as if two separate funds to which senior creditor could look for payment were still in existence and as if proceeds from sale of farmland to which it alone could look for payment represented proceeds from sale of joint collateral distributed to senior creditor years earlier, was not "final order" from which appeal would lie to the circuit court of appeals, where district court had remanded to bankruptcy court for determination as to how sales proceeds should be distributed without regards to marshalling doctrine, and it was unclear that matters before bankruptcy court on remand were merely ministerial); United States ex rel. Yelverton v. Federal Insurance Company, 831 F.3d 585, 62 Bankr. Ct. Dec. (CRR) 259, Bankr. L. Rep. (CCH) P 82984 (D.C. Cir. 2016) (injunction issued by district court requiring debtor to obtain its permission "before filing any new civil action in this Court" did not cover appeals to district court from bankruptcy court with adequate specificity, even though bankruptcy court was unit of district court; there were important distinctions between treatment of bankruptcy appeals and that of civil actions filed originally in district court, and district court treated bankruptcy court as distinct entity in its orders); Schaumburg Bank & Trust Co., N.A. v. Alsterda, 815 F.3d 306, 62 Bankr. Ct. Dec. (CRR) 90, Bankr. L. Rep. (CCH) P 82934 (7th

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Cir. 2016) (disapproved of by, Matter of Anderson, 917 F.3d 566, 66 Bankr. Ct. Dec. (CRR) 238 (7th Cir. 2019)) (bankruptcy court's order overruling bank's objection to a settlement, which did not resolve how settlement proceeds were to be distributed and without prejudice to bank's ability to assert an interest in the funds through tracing, was not a final order); In re McCormick, 812 F.3d 659, 62 Bankr. Ct. Dec. (CRR) 25, 75 Collier Bankr. Cas. 2d (MB) 122 (8th Cir. 2016) (BAP's remand order directing bankruptcy court to determine the timeliness of creditor's fee request was not a final, appealable order; resolution of timeliness and reasonableness of creditor's fee application affected merits of underlying dispute over the fee request, such that bankruptcy court on remand was left with more than a purely mechanical or ministerial task, which were likely to generate a new appeal); In re Landmark Fence Co., Inc., 801 F.3d 1099, 61 Bankr. Ct. Dec. (CRR) 145, 25 Wage & Hour Cas. 2d (BNA) 547 (9th Cir. 2015) (district court's remand order for further fact finding by the bankruptcy court was not final for purposes of appeal); In re Civic Partners Sioux City, LLC, 779 F.3d 572, 60 Bankr. Ct. Dec. (CRR) 189 (8th Cir. 2015) (an order denying confirmation of a plan, which does not dismiss the case, is not a final order and cannot be appealed); In re Roussel, 769 F.3d 574, 60 Bankr. Ct. Dec. (CRR) 13 (8th Cir. 2014) (district court's remand order was not final where the bankruptcy court was required to decide on remand whether attorney's fees awarded by a state court were nondischargeable); In re Atlas IT Export Corp., 761 F.3d 177, 186, 59 Bankr. Ct. Dec. (CRR) 245, 72 Collier Bankr. Cas. 2d (MB) 1, Bankr. L. Rep. (CCH) P 82674 (1st Cir. 2014) (ruling, as a matter of first impression, that an order denying stay relief is not always final for appeal purposes; “Basically what the bankruptcy court did was specify the venue (the Puerto Rico district court) that gets first crack at deciding the first-filed issue—a decision that will reveal which federal court (Puerto Rico's or Virginia's) gets to preside over the contract case. So, as the situation now stands, [the company] can litigate everything—the first-filed issue and the contract imbroglio. It just has no guarantee that it will litigate in its preferred venue … Ultimately this concatenation of circumstances—an order that does not decide the first-filed issue (the very issue that prompted [the company's] stay relief effort), but instead” left the company free to fight it out with debtor on the issue in another forum, undercut the company's finality claim.); In re Yazoo Pipeline Co., L.P., 746 F.3d 211, 59 Bankr. Ct. Dec. (CRR) 64, 71 Collier Bankr. Cas. 2d (MB) 492 (5th Cir. 2014) (district court's order vacating in part an attorney's fee award and requiring the bankruptcy court to perform more than a ministerial function on remand was not a final appealable order); In re Gordon, 743 F.3d 720, 71 Collier Bankr. Cas. 2d (MB) 50 (10th Cir. 2014) (district court's order reversing bankruptcy court's decision confirming Chapter 13 debtors' modified model plan, and remanding to give debtors an opportunity to propose a plan in conformity with district's model plan, was not a final, appealable order); In re Rockford Products Corp., 741 F.3d 730, 58 Bankr. Ct. Dec. (CRR) 233 (7th Cir. 2013) (dismissing appeal for want of appellate jurisdiction where the district court's remand order to the bankruptcy court was more than ministerial); In re Celotex Corp., 700 F.3d 1262, 57 Bankr. Ct. Dec. (CRR) 46, 68 Collier Bankr. Cas. 2d (MB) 1144 (11th Cir. 2012) (neither district court’s order remanding matter to bankruptcy court for further proceedings nor bankruptcy court’s order, which left unresolved parties’ claims on the merits, but merely identified proper forum for resolution of those claims, were final orders; court of appeals accordingly lacked jurisdiction); In re Fisette, 695 F.3d 803, 806 (8th Cir. 2012) (internal quotations omitted) (BAP’s remand order was not final where issues to be resolved pursuant to that order would require bankruptcy court to tackle difficult issues on remand; “The bankruptcy court’s need to work through these difficult issues on remand is clearly further judicial activity that is likely to affect the merits of the controversy.”); In re Gomez, 404 Fed. Appx. 850 (5th Cir. 2010) (district court’s remand order required further action and therefore was not final); In re Farmland Industries, Inc., 567 F.3d 1010, 1015, 51 Bankr. Ct. Dec. (CRR) 200, 61 Collier Bankr. Cas. 2d (MB) 1529 (8th Cir. 2009) (BAP’s decision was final and appealable because its remand instruction to bankruptcy court to dismiss adversary proceeding was “a purely mechanical or ministerial task” for the bankruptcy court); Settembre v. Fidelity & Guar. Life Ins. Co., 552 F.3d 438, 60 Collier Bankr. Cas. 2d (MB) 1701, Bankr. L. Rep. (CCH) P 81401 (6th Cir. 2009) (noting that nine courts of appeals (including the Sixth) hold that a district court’s order is not final and appealable unless remand is for “ministerial” proceedings, while the Third and the Ninth take a minority position and apply a multi-factor test); In re Holland, 539 F.3d 563, 60 Collier Bankr. Cas. 2d (MB) 25, Bankr. L. Rep. (CCH) P 81310 (7th Cir. 2008) (an order remanding a matter to the bankruptcy court for further proceedings is not appealable unless the nature of those proceedings is purely ministerial); In re Pratt, 524 F.3d 580, 49 Bankr. Ct. Dec. (CRR) 221, Bankr. L. Rep. (CCH) P 81217 (5th Cir. 2008) (appellate jurisdiction was proper where the principal issue on appeal (sanctions) was finally

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resolved below and the remand was merely for a determination of attorney's fees); In re Miniscribe Corp., 309 F.3d 1234, 40 Bankr. Ct. Dec. (CRR) 102, Bankr. L. Rep. (CCH) P 78743 (10th Cir. 2002) (district court order remanding proceeding for redetermination of Chapter 7 trustee's final fee award is not final and therefore not appealable); In re Harrington, 992 F.2d 3, 24 Bankr. Ct. Dec. (CRR) 367, Bankr. L. Rep. (CCH) P 75241 (1st Cir. 1993) (where the district court remanded for further proceedings, the order is interlocutory); In re Vylene Enterprises, Inc., 968 F.2d 887, 23 Bankr. Ct. Dec. (CRR) 236, 27 Collier Bankr. Cas. 2d (MB) 771, Bankr. L. Rep. (CCH) P 74737 (9th Cir. 1992) (district court order which remanded the case for further proceedings is not final); In re Cascade Energy & Metals Corp., 956 F.2d 935, 22 Bankr. Ct. Dec. (CRR) 980, Bankr. L. Rep. (CCH) P 74453 (10th Cir. 1992) (district court order which reversed a bankruptcy court decision that it lacked jurisdiction and remanded for further proceedings was not final).

See also In re Scholz, 699 F.3d 1167, 1170, 68 Collier Bankr. Cas. 2d (MB) 1103, Bankr. L. Rep. (CCH) P 82374 (9th Cir. 2012) (court of appeals had jurisdiction to review the non-final decision of BAP, which had vacated and remanded bankruptcy court's decision for a recalculation of Chapter 13 debtor's current monthly income and projected disposable income, where appeal concerned a purely legal issue that did not turn on factual record and circuit court's resolution of the legal issue would not interfere with the bankruptcy court's role as fact finder and would actually increase judicial efficiency; applying "flexible approach to jurisdiction in the context of bankruptcy appeals" as set out in In re Bender, 586 F.3d 1159, 1163, 52 Bankr. Ct. Dec. (CRR) 90, 62 Collier Bankr. Cas. 2d (MB) 1155 (9th Cir. 2009)).

8 See 28 U.S.C.A. § 1292(b). See also discussion of Connecticut Nat. Bank v. Germain, 503 U.S. 249, 112 S. Ct. 1146, 117 L. Ed. 2d 391, 22 Bankr. Ct. Dec. (CRR) 1130, 26 Collier Bankr. Cas. 2d (MB) 175, Bankr. L. Rep. (CCH) P 74457A (1992), in § 2:48. With respect to appeal from a Bankruptcy Appellate Panel's decision regarding an interlocutory order, coupled with certification to the court of appeals, see In re Ransom, 380 B.R. 809, 59 Collier Bankr. Cas. 2d (MB) 479, Bankr. L. Rep. (CCH) P 81087 (B.A.P. 9th Cir. 2007) (Bankruptcy Appellate Panel certified its decision regarding an interlocutory order, noting the difference in wording between 28 U.S.C.A. § 158(d)(1) and 28 U.S.C.A. § 158(d)(2)).

9 Catlin v. U.S., 324 U.S. 229, 233, 65 S. Ct. 631, 89 L. Ed. 911 (1945). See also Matter of Anderson, 917 F.3d 566, 66 Bankr. Ct. Dec. (CRR) 238 (7th Cir. 2019) (when an interlocutory decision by a bankruptcy court is reversed by a ruling that leaves no more work for either the bankruptcy court or the district court, the decision is canonically final, making an appeal under § 158(d)(1) proper); In re Wiersma, 483 F.3d 933, 48 Bankr. Ct. Dec. (CRR) 15 (9th Cir. 2007), for additional opinion, see, 227 Fed. Appx. 603 (9th Cir. 2007) (an order is final if it constitutes a complete adjudication of the issues at bar and clearly evidences the judge's intention that it be final); In re Atlas, 210 F.3d 1305, 36 Bankr. Ct. Dec. (CRR) 9, 24 Employee Benefits Cas. (BNA) 1815, Bankr. L. Rep. (CCH) P 78180, 46 Fed. R. Serv. 3d 713 (11th Cir. 2000) (a final order ends the litigation and leaves nothing for the court to do but execute on its order); In re Telluride Income Growth LP, 364 B.R. 407 (B.A.P. 10th Cir. 2007) (bankruptcy court order abstaining from deciding unresolved issues in an adversary proceeding is a final order; court had made its intention clear that all remaining matters should be resolved in state court); In re Adelphia Communications Corp., 333 B.R. 649 (S.D. N.Y. 2005) (discussing extensively concept of finality).

But see In re ASARCO, L.L.C., 650 F.3d 593, 55 Bankr. Ct. Dec. (CRR) 79, 66 Collier Bankr. Cas. 2d (MB) 1, Bankr. L. Rep. (CCH) P 82056 (5th Cir. 2011) (rejecting a "rigid rule of finality" rule in bankruptcy appeals; finality under § 158(d) not the same as finality under 28 U.S.C.A. § 1291); rejecting *Integrated Resources*); In re Porto, 645 F.3d 1294, 55 Bankr. Ct. Dec. (CRR) 25 (11th Cir. 2011) (addressing an issue of apparent first impression for the court, the district court's order affirming the bankruptcy court's merits decision was a final, appealable order, despite the then-undecided issue of attorney fees, and so judgment creditor's notice of appeal was untimely as to that order); In re ClassicStar, LLC, 457 B.R. 594 (E.D. Ky. 2011) (bankruptcy court's decision to defer decision on question of whether to award pre- and postjudgment interest or attorney fees, and in what amounts, to Chapter 7 trustee following entry of judgment in trustee's favor on fraudulent transfer avoidance claim did not change the "final" nature of its order of judgment on fraudulent transfer claim).

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10 See, e.g., Klestadt & Winters, LLP v. Cangelosi, 672 F.3d 809, 56 Bankr. Ct. Dec. (CRR) 34, Bankr. L. Rep. (CCH) P 82213 (9th Cir. 2012) (sanctions order against debtors and debtors' counsel was not completely separate from the merits of the bankruptcy action and thus, not appealable); In re Wiersma, 483 F.3d 933, 939, 48 Bankr. Ct. Dec. (CRR) 15 (9th Cir. 2007), for additional opinion, see, 227 Fed. Appx. 603 (9th Cir. 2007) ("a bankruptcy order is appealable where it 1) resolves and seriously affects substantive rights and 2) finally determines the discrete issue to which it is addressed." (quoting In re Frontier Properties, Inc., 979 F.2d 1358, 1363, 23 Bankr. Ct. Dec. (CRR) 1137, 27 Collier Bankr. Cas. 2d (MB) 1515, Bankr. L. Rep. (CCH) P 75024 (9th Cir. 1992))); In re Kitty Hawk, Inc., 204 Fed. Appx. 341, 46 Bankr. Ct. Dec. (CRR) 265 (5th Cir. 2006) (district court order denying administrative expense claim is discrete unit from confirmation order and was final for purposes of appeal); In re Integrated Resources, Inc., 3 F.3d 49, 24 Bankr. Ct. Dec. (CRR) 978, Bankr. L. Rep. (CCH) P 75406 (2d Cir. 1993) (the order does not need to resolve all issues in the case, but it must at least resolve a discrete claim, including issues of the proper measure of relief); In re Harrington, 992 F.2d 3, 24 Bankr. Ct. Dec. (CRR) 367, Bankr. L. Rep. (CCH) P 75241 (1st Cir. 1993) (a bankruptcy court order is appealable as final where it conclusively determines a discrete dispute within a larger case); Matter of Greene County Hosp., 835 F.2d 589, 593, 18 Collier Bankr. Cas. 2d (MB) 1220 (5th Cir. 1988) (in order to be appealable, a bankruptcy court order must be final with respect to a "single jurisdictional unit"); FIA Card Services, N.A. v. Knoche, 2012 WL 2402817 (D. Minn. 2012) (stating that the test for finality in bankruptcy orders is more flexible than for general civil proceedings and that to determine whether the bankruptcy order is final, the reviewing court considers the extent to which the order leaves the bankruptcy court with nothing to do other than execute the order).

But see Matter of Penn, 779 Fed. Appx. 278 (5th Cir. 2019) (district lacked jurisdiction over appeal where by requesting an immediate dismissal of her Chapter 13 case, the debtor prevented the bankruptcy court from addressing the trustee's remaining objections to other aspects of her proposed plan); In re American Colonial Broadcasting Corp., 758 F.2d 794, 801, 12 Bankr. Ct. Dec. (CRR) 1301, 12 Collier Bankr. Cas. 2d (MB) 799, Bankr. L. Rep. (CCH) P 70367 (1st Cir. 1985) ("An order which 'does not finally determine a cause of action but only decides some intervening matter pertaining to the cause, and which requires further steps to be taken in order to enable the court to adjudicate the cause on the merits,' is considered interlocutory.").

11 See, e.g., In re Popkin & Stern, 289 F.3d 554, 556, 39 Bankr. Ct. Dec. (CRR) 166 (8th Cir. 2002) ("Finality for bankruptcy purposes is a complex subject, and there are times when the practical needs of the process require prompt appellate consideration of what appear to be interlocutory orders."); In re Firstmark Corp., 46 F.3d 653, 26 Bankr. Ct. Dec. (CRR) 804, Bankr. L. Rep. (CCH) P 76384 (7th Cir. 1995) (finality requirement is read with more flexibility in bankruptcy cases); In re Financial News Network, Inc., 931 F.2d 217, 220, Bankr. L. Rep. (CCH) P 73930 (2d Cir. 1991) (finality requirement in bankruptcy proceedings is less rigidly applied than in ordinary civil litigation; "[o]rders in bankruptcy cases may be final if they resolve discrete disputes within the larger case."); In re Fox, 241 B.R. 224, 43 Collier Bankr. Cas. 2d (MB) 261 (B.A.P. 10th Cir. 1999) (finality is applied more pragmatically in bankruptcy); WCI Steel, Inc. v. Wilmington Trust Co., 338 B.R. 1 (N.D. Ohio 2005) (in bankruptcy the requirement that an order must be final to be appealable as a matter of right is applied in a pragmatic and less rigid manner); In re Dow Corning Corp., 212 B.R. 258 (E.D. Mich. 1997) (finality for bankruptcy purposes is more pragmatic and less technical). See also In re Linton, 631 B.R. 882 (B.A.P. 9th Cir. 2021) (on motion of former alleged debtor to hold non-petitioners jointly liable for attorney fees, costs, and damages following dismissal of involuntary petition, construed as motion to join parties, although bankruptcy court's order declining to impose alter ego liability on non-petitioners was not an immediately appealable final order at the time it was entered, the order became final by virtue of the doctrine of cumulative finality; while alleged former debtor's notice of appeal asserted jurisdiction on incorrect theory that bankruptcy court's alter ego order was an immediately appealable final order, the required final judgment in the overall discrete proceeding was entered after oral argument before the BAP, when the bankruptcy court entered judgment awarding fees and costs against petitioning creditor, thereby affording the BAP jurisdiction over all orders entered in the discrete relevant proceeding).

12 See, e.g., In re UAL Corp., 468 F.3d 456, 47 Bankr. Ct. Dec. (CRR) 67, 39 Employee Benefits Cas. (BNA) 1136, Bankr. L. Rep. (CCH) P 80761 (7th Cir. 2006) (bankruptcy court order confirming Chapter 11 plan was final); In re Watson, 403 F.3d 1, Bankr. L. Rep. (CCH) P 80261 (1st Cir. 2005) (order denying confirmation

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of Chapter 13 plan and dismissing case is final); In re PWS Holding Corp., 228 F.3d 224, 36 Bankr. Ct. Dec. (CRR) 955, 44 Collier Bankr. Cas. 2d (MB) 1647 (3d Cir. 2000) (order confirming Chapter 11 plan was a final order); In re Francis, 273 B.R. 87, Bankr. L. Rep. (CCH) P 78591, 2002 FED App. 0001P (B.A.P. 6th Cir. 2002), subsequently aff'd, 69 Fed. Appx. 766 (6th Cir. 2003) (order confirming a Chapter 13 plan is final). See also Mort Ranta v. Gorman, 721 F.3d 241, Bankr. L. Rep. (CCH) P 82504 (4th Cir. 2013) (gathering cases and noting split of authority; siding with courts that have taken a more pragmatic approach to finality, including In re Armstrong World Industries, Inc., 432 F.3d 507, 45 Bankr. Ct. Dec. (CRR) 222, 55 Collier Bankr. Cas. 2d (MB) 789, Bankr. L. Rep. (CCH) P 80434 (3d Cir. 2005) and In re Bartee, 212 F.3d 277, 36 Bankr. Ct. Dec. (CRR) 34, Bankr. L. Rep. (CCH) P 78192 (5th Cir. 2000) and holding that a bankruptcy court's order denying confirmation of a Chapter 13 plan can be a final order for purposes of appeal under 28 U.S.C.A. § 158(d)(1) even if the case has not yet been dismissed).

But see In re Lindsey, 726 F.3d 857, 70 Collier Bankr. Cas. 2d (MB) 72, Bankr. L. Rep. (CCH) P 82522 (6th Cir. 2013) (order denying confirmation of a Chapter 11 plan is not a final, appealable order); In re McKinney, 610 F.3d 399, Bankr. L. Rep. (CCH) P 81793 (7th Cir. 2010) (order overruling objection to debtor's Chapter 13 plan, ordering a further hearing on amount of claim, and not confirming plan is not a final order under 28 U.S.C.A. § 158(d)(1)); In re Lievsay, 118 F.3d 661, 31 Bankr. Ct. Dec. (CRR) 82 (9th Cir. 1997) (order denying confirmation of Chapter 11 plan but not dismissing is an interlocutory nonfinal order); Lewis v. U.S., Farmers Home Admin., 992 F.2d 767, 24 Bankr. Ct. Dec. (CRR) 339, Bankr. L. Rep. (CCH) P 75240 (8th Cir. 1993) (order denying confirmation of a plan but not dismissing is not a final order); In re Zahn, 367 B.R. 654, 656 (B.A.P. 8th Cir. 2007), rev'd on other grounds, 526 F.3d 1140, 59 Collier Bankr. Cas. 2d (MB) 1110, Bankr. L. Rep. (CCH) P 81242 (8th Cir. 2008) ("While an order denying confirmation of a plan would seem to be a final order because it is a final determination of the proceeding regarding confirmation of that plan, under Eighth Circuit precedent, a bankruptcy court order which denies confirmation of a plan, but which does not dismiss the underlying case is not a final order."; concurring opinion gathers cases and criticizes the rule because it leaves a debtor with few alternatives; in reversing, the Eighth Circuit held that a debtor could object to debtor's own plan and then appeal confirmation of the debtor's own plan).

13 See, e.g., Ritzen Group, Inc. v. Jackson Masonry, LLC, 140 S. Ct. 582, 205 L. Ed. 2d 419, 68 Bankr. Ct. Dec. (CRR) 49, Bankr. L. Rep. (CCH) P 83456 (2020) (bankruptcy court's order unreservedly denying relief from the automatic stay constituted a final, immediately appealable order); In re Mayer, 28 F.4th 67, 71 Bankr. Ct. Dec. (CRR) 83 (9th Cir. 2022), for additional opinion, see, 2022 WL 685508 (9th Cir. 2022) (bankruptcy court's denial without prejudice of creditor's motion for relief from automatic bankruptcy stay to pursue his claims against debtor in state court was final, immediately appealable order; bankruptcy court indicated its intention to address claims at issue in state litigation, there were no further developments that might change stay calculus, and by determining that creditor's claims would be litigated in bankruptcy court in California rather than state court in Massachusetts, decision resolved and seriously affected substantive rights and finally determined discrete issue to which it was addressed); In re City of Desert Hot Springs, 339 F.3d 782, 56 Fed. R. Serv. 3d 727 (9th Cir. 2003) (denial of a motion for relief from stay is a final decision subject to immediate review); In re Calore Exp. Co., Inc., 288 F.3d 22, 48 Collier Bankr. Cas. 2d (MB) 1017, 47 U.C.C. Rep. Serv. 2d 759, 89 A.F.T.R.2d 2002-2290 (1st Cir. 2002) (bankruptcy court order denying relief from stay is a final order); Matter of Chunn, 106 F.3d 1239, 30 Bankr. Ct. Dec. (CRR) 637, Bankr. L. Rep. (CCH) P 77299 (5th Cir. 1997) (order granting relief from automatic stay is a final and appealable order); In re Sonnax Industries, Inc., 907 F.2d 1280, 23 Collier Bankr. Cas. 2d (MB) 132 (2d Cir. 1990) (denial of relief from automatic stay is a final order); In re Medical Management Group, Inc., 302 B.R. 112 (B.A.P. 10th Cir. 2003) (order denying relief from stay is final); In re Schaffrath, 214 B.R. 153, Bankr. L. Rep. (CCH) P 77552 (B.A.P. 6th Cir. 1997) (grants and denials of motions for relief from stay are final appealable orders as are grants of relief from the Chapter 13 codebtor stay).

But see In re Henriquez, 261 B.R. 67, 71, 37 Bankr. Ct. Dec. (CRR) 196, 46 Collier Bankr. Cas. 2d (MB) 179 (B.A.P. 1st Cir. 2001) ("[T]here is support for our view that a blanket 'final order' label should not be affixed to orders denying relief from stay, without analysis of the nature and posture of the underlying dispute."); In re Northwestern Corp., 319 B.R. 68 (D. Del. 2005) (decision turns on its facts and precise wording of order); In re Enron Corp., 316 B.R. 767, 43 Bankr. Ct. Dec. (CRR) 252 (S.D. N.Y. 2004) (denial

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of a motion for relief from stay was not a final order); In re Shepard Clothing Co., Inc., 280 B.R. 786 (D. Mass. 2002) (order denying motion for relief from stay is not final; gathering cases).

14 See Precision Industries, Inc. v. Qualitech Steel SBQ, LLC, 327 F.3d 537, 41 Bankr. Ct. Dec. (CRR) 65, 49 Collier Bankr. Cas. 2d (MB) 1765, Bankr. L. Rep. (CCH) P 78836 (7th Cir. 2003) (sale orders issued by a bankruptcy court are final appealable orders); In re Vlasek, 325 F.3d 955, 41 Bankr. Ct. Dec. (CRR) 43, Bankr. L. Rep. (CCH) P 78829 (7th Cir. 2003) (orders approving or denying sale of property are final decisions); In re Kids Creek Partners, 200 F.3d 1070, 35 Bankr. Ct. Dec. (CRR) 123 (7th Cir. 2000) (order approving bankruptcy sale is final); Matter of Gould, 977 F.2d 1038, Bankr. L. Rep. (CCH) P 74908 (7th Cir. 1992) (order vacating § 363 sale and directing rebidding is final); Hendrick v. Avent, 891 F.2d 583, Bankr. L. Rep. (CCH) P 73217, R.I.C.O. Bus. Disp. Guide (CCH) P 7410, 15 Fed. R. Serv. 3d 1111 (5th Cir. 1990) (authorization to sell property is a final judgment).

But see In re Integrated Resources, Inc., 3 F.3d 49, 24 Bankr. Ct. Dec. (CRR) 978, Bankr. L. Rep. (CCH) P 75406 (2d Cir. 1993) (bankruptcy court order approving in principle reimbursement and break-up fee was not a final order because the bankruptcy court could always refuse to allow the fee).

15 See, e.g., In re Martin, 761 F.2d 472, 12 Collier Bankr. Cas. 2d (MB) 974, Bankr. L. Rep. (CCH) P 70543 (8th Cir. 1985) (without specifically addressing issue of finality, court heard and decided creditor's appeal of bankruptcy court order granting the debtor's motion for the use of cash collateral); In re Foreside Management Co., LLC, 402 B.R. 446, 51 Bankr. Ct. Dec. (CRR) 90 (B.A.P. 1st Cir. 2009) (orders authorizing postpetition financing pursuant to § 364 are considered final); Official Committee of Unsecured Creditors of New World Pasta Co. v. New World Pasta Co., 322 B.R. 560 (M.D. Pa. 2005) (district court considered debtor-in-possession financing order and cash collateral order as final appealable orders).

16 See Matter of Taylor, 913 F.2d 102, 20 Bankr. Ct. Dec. (CRR) 1515, 23 Collier Bankr. Cas. 2d (MB) 1035, Bankr. L. Rep. (CCH) P 73606 (3d Cir. 1990) (rejection of a contract fully and finally resolved a discrete issue in the case and is a final appealable order); In re Alert Holdings, Inc., 1993 WL 187904 (S.D. N.Y. 1993) (order authorizing rejection of executory contract is a final appealable order); Fed. R. Bankr. P. 8002(c)(2)(D) (court may not extend time to appeal order authorizing assumption or assignment of executory contract).

17 See also Matter of Texas Extrusion Corp., 844 F.2d 1142, 17 Bankr. Ct. Dec. (CRR) 1057, Bankr. L. Rep. (CCH) P 72285 (5th Cir. 1988) (bankruptcy court order approving disclosure statement not final order); In re Sunflower Racing, Inc., 218 B.R. 972 (D. Kan. 1998) (order denying motion for approval of a disclosure statement and leave to disseminate was not a final order); In re Ionosphere Clubs, Inc., 179 B.R. 24 (S.D. N.Y. 1995) (gathering cases); In re Pacific Gas & Elec. Co., 273 B.R. 795, Bankr. L. Rep. (CCH) P 78608 (Bankr. N.D. Cal. 2002) (approval of disclosure statement, as well as denial of such approval, are interlocutory orders).

18 Compare United Artists Theatre Co. v. Walton, 315 F.3d 217, 40 Bankr. Ct. Dec. (CRR) 182, 49 Collier Bankr. Cas. 2d (MB) 1434, Bankr. L. Rep. (CCH) P 78777 (3d Cir. 2003) (order approving retention of professional is final); In re Kurtzman, 194 F.3d 54, 35 Bankr. Ct. Dec. (CRR) 92 (2d Cir. 1999) (rejected by, In re Danner, 549 Fed. Appx. 702 (9th Cir. 2013)) (order denying retention of counsel is final); In re AroChem Corp., 176 F.3d 610, 41 Collier Bankr. Cas. 2d (MB) 1647, Bankr. L. Rep. (CCH) P 77933 (2d Cir. 1999) (order authorizing a trustee to retain counsel is final); with In re M.T.G., Inc., 403 F.3d 410, 413, 44 Bankr. Ct. Dec. (CRR) 147, 2005 FED App. 0168P (6th Cir. 2005) ("'Generally a bankruptcy court's order approving or substituting counsel in a bankruptcy proceeding is not appealable.'" (quoting In re Cottrell, 876 F.2d 540, 541, 19 Bankr. Ct. Dec. (CRR) 869, Bankr. L. Rep. (CCH) P 72913 (6th Cir. 1989))); In re Smyth, 207 F.3d 758, 35 Bankr. Ct. Dec. (CRR) 263, Bankr. L. Rep. (CCH) P 78143 (5th Cir. 2000) (orders appointing counsel are interlocutory and not generally considered final for purposes of appeal); In re S.S. Retail Stores Corp., 162 F.3d 1230, 33 Bankr. Ct. Dec. (CRR) 779 (9th Cir. 1998) (order approving law firm's employment by debtor-in-possession is not a final order); Spears v. U.S. Trustee, 26 F.3d 1023, 29 Fed. R. Serv. 3d 777 (10th Cir. 1994) (order granting retention of Chapter 7 trustee's counsel on a going-forward basis is not interlocutory because counsel's retention is ongoing and the dispute over gap period retention

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can be resolved when contract is finally determined); In re Westwood Shake & Shingle, Inc., 971 F.2d 387, Bankr. L. Rep. (CCH) P 74927 (9th Cir. 1992) (order appointing counsel is not a final order); In re Nashville Senior Living, LLC, 426 B.R. 240, 63 Collier Bankr. Cas. 2d (MB) 1071 (B.A.P. 6th Cir. 2010) (order denying employment application was not final order and discretionary leave to file interlocutory appeal was not warranted); In re Union Home and Indus., Inc., 376 B.R. 298, 48 Bankr. Ct. Dec. (CRR) 268 (B.A.P. 10th Cir. 2007) (court approves retention of professional and later sua sponte revokes the order after discovering that counsel had not filed Rule 2014 statement; court later approves retention on a going forward basis and denies motion to reconsider; this order is not final for appeal purposes; order did not deny employment for the period between the date of filing and the corrected order; the issue of retention during the gap period was left for determination when a final fee application was made). See also Big Mac Marine, Inc. v. Jensen, 305 B.R. 309 (D. Neb. 2004) (orders regarding appointment of counsel generally interlocutory).

In *In re Union Home*, the Tenth Circuit BAP attempted to reconcile the disparate holdings in stating that it is well understood that orders granting employment to a professional, denying a motion to disqualify or approving an interim fee award are interlocutory, while orders denying retention outright, removing a professional from employment, or fixing a final fee award are final and appealable.

19 Compare In re Independent Engineering Co., Inc., 232 B.R. 529, 34 Bankr. Ct. Dec. (CRR) 47 (B.A.P. 1st Cir. 1999), aff'd, 197 F.3d 13, 35 Bankr. Ct. Dec. (CRR) 327, Bankr. L. Rep. (CCH) P 78070 (1st Cir. 1999) (order disqualifying debtor's counsel is final), and In re Enron Corp., 2003 WL 223455 (S.D. N.Y. 2003) (order denying motion to disqualify counsel for the committee is final), with In re M.T.G., Inc., 298 B.R. 310 (E.D. Mich. 2003) (bankruptcy court orders concerning disqualification of counsel are not final). See also Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368, 101 S. Ct. 669, 66 L. Ed. 2d 571, Fed. Sec. L. Rep. (CCH) P 97816, 1980-81 Trade Cas. (CCH) ¶ 63796 (1981) (holding that an order denying a motion to disqualify counsel in a civil case is not a final appealable decision).

20 See In re Truong, 513 F.3d 91, Bankr. L. Rep. (CCH) P 81090 (3d Cir. 2008) (bankruptcy court order denying debtor a hearing on question of whether the Chapter 7 trustee is conflicted was not final); In re American Preferred Prescription, Inc., 255 F.3d 87, 38 Bankr. Ct. Dec. (CRR) 21, Bankr. L. Rep. (CCH) P 78477 (2d Cir. 2001) (order approving the appointment of a trustee is final); In re Marvel Entertainment Group, Inc., 140 F.3d 463, 470, 32 Bankr. Ct. Dec. (CRR) 479, 39 Collier Bankr. Cas. 2d (MB) 1315, Bankr. L. Rep. (CCH) P 77670 (3d Cir. 1998) (citations omitted) ("We recognize that the Courts of Appeals are not in total agreement on whether a district court order appointing a bankruptcy trustee is interlocutory or final. Using the liberal finality rules which apply in bankruptcy matters of this nature, we believe that jurisdiction is proper over the order appointing a trustee here."); Matter of Cajun Elec. Power Co-op., Inc., 69 F.3d 746, 28 Bankr. Ct. Dec. (CRR) 212, Bankr. L. Rep. (CCH) P 76706 (5th Cir. 1995), opinion withdrawn in part on other grounds on reh'g, 74 F.3d 599 (5th Cir. 1996) (appointment of trustee in Chapter 11 case was immediately appealable final order); Committee of Dalkon Shield Claimants v. A.H. Robins Co., Inc., 828 F.2d 239, 16 Bankr. Ct. Dec. (CRR) 1019, 17 Collier Bankr. Cas. 2d (MB) 591, Bankr. L. Rep. (CCH) P 71978 (4th Cir. 1987) (order denying appointment of a trustee was final); In re Delta Services Industries, Etc., 782 F.2d 1267, 14 Bankr. Ct. Dec. (CRR) 327, 14 Collier Bankr. Cas. 2d (MB) 591, Bankr. L. Rep. (CCH) P 71003 (5th Cir. 1986) (appointment of a trustee is not final); Matter of Cash Currency Exchange, Inc., 762 F.2d 542, 13 Bankr. Ct. Dec. (CRR) 262, 12 Collier Bankr. Cas. 2d (MB) 1499, Bankr. L. Rep. (CCH) P 70561, 87 A.L.R. Fed. 255 (7th Cir. 1985) (order appointing a trustee is final).

For cases involving motions to remove a trustee, see In re SK Foods, L.P., 676 F.3d 798, 56 Bankr. Ct. Dec. (CRR) 5 (9th Cir. 2012) (bankruptcy court order denying a motion for removal of the trustee was not a final order; bankruptcy court had not resolved or seriously affected substantive rights, or finally determined the issue since the trustee could be removed at a later time); In re AFI Holding, Inc., 530 F.3d 832, 50 Bankr. Ct. Dec. (CRR) 37, 59 Collier Bankr. Cas. 2d (MB) 1283 (9th Cir. 2008) (ruling that as a matter of first impression an order removing a trustee under § 324 is final); In re Walker, 515 F.3d 1204, 49 Bankr. Ct. Dec. (CRR) 111, Bankr. L. Rep. (CCH) P 81108 (11th Cir. 2008) (order removing a trustee is final); Matter of Schultz Mfg. Fabricating Co., 956 F.2d 686, Bankr. L. Rep. (CCH) P 74475 (7th Cir. 1992) (treating the denial of a motion to remove a trustee as a final order); In re BH & P, Inc., 949 F.2d 1300, 22 Bankr. Ct.

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Dec. (CRR) 541, 26 Collier Bankr. Cas. 2d (MB) 37, Bankr. L. Rep. (CCH) P 74356 (3d Cir. 1991) (order granting a motion to remove is final); Turshen v. Chapman, 823 F.2d 836 (4th Cir. 1987) (holding that an order granting removal is final).

21 See In re Johns-Manville Corp., 824 F.2d 176, 17 Collier Bankr. Cas. 2d (MB) 87, Bankr. L. Rep. (CCH) P 71880 (2d Cir. 1987) (order denying request to appoint an equity committee is not final because it does not exclude creditors from participation in the proceeding; it merely denies them the advantages of official committee status); In re Finova Group, Inc., 2008 WL 522965 (D. Del. 2008) (recognizing the dispute on the issue and the lack of circuit precedent; holding that order appointing a committee is not final); In re Edison Bros. Stores, Inc., 1996 WL 363806 (D. Del. 1996) (holding that an order denying appointment of a committee is not final).

22 See, e.g., In re Cyberco Holdings, Inc., 734 F.3d 432, 58 Bankr. Ct. Dec. (CRR) 92, 70 Collier Bankr. Cas. 2d (MB) 30, Bankr. L. Rep. (CCH) P 82523 (6th Cir. 2013) (bankruptcy court's orders denying motions to substantively consolidate the bankruptcy estates of two business debtors were not final orders); In re Lehman Bros. Holdings Inc., 697 F.3d 74, 77, 57 Bankr. Ct. Dec. (CRR) 23 (2d Cir. 2012) (bankruptcy court's order denying creditor's motion to intervene in an adversary proceeding was a final appealable order where "denial of the opportunity to be heard concludes the matter for all practical purposes for the would-be intervenor"); McDow v. Dudley, 662 F.3d 284, 66 Collier Bankr. Cas. 2d (MB) 1646, Bankr. L. Rep. (CCH) P 82113 (4th Cir. 2011) (order denying U.S. Trustee's motion to dismiss a Chapter 7 bankruptcy is final, appealable order under 28 U.S.C.A. § 158(a)); Kimbrell v. Brown, 651 F.3d 752, 55 Bankr. Ct. Dec. (CRR) 24 (7th Cir. 2011) (district court's dismissal of motor vehicle passenger's personal injury claims as to truck driver's employer was not an appealable final judgment, where passenger continued to seek adjudication of passenger's claims against truck driver, against whom the claims were automatically stayed when truck driver filed Chapter 13 bankruptcy; even if passenger's suit against truck driver was void ab initio because it was filed in violation of the automatic stay, stay was lifted several weeks before oral argument on appeal, and passenger filed a new complaint against truck driver in state court just two days before oral argument); In re Bender, 586 F.3d 1159, 52 Bankr. Ct. Dec. (CRR) 90, 62 Collier Bankr. Cas. 2d (MB) 1155 (9th Cir. 2009) (adhering to the more flexible finality standard even though the doubt cast in the flexible standard in Connecticut Nat. Bank v. Germain, 503 U.S. 249, 112 S. Ct. 1146, 117 L. Ed. 2d 391, 22 Bankr. Ct. Dec. (CRR) 1130, 26 Collier Bankr. Cas. 2d (MB) 175, Bankr. L. Rep. (CCH) P 74457A (1992), causes litigants to guess whether there is appellate jurisdiction); In re Swegan, 555 F.3d 510, 512, Bankr. L. Rep. (CCH) P 81419 (6th Cir. 2009) (BAP's reversal of a summary judgment in favor of the defendant-debtor was not a final order; "The BAP's decision contemplates further non-ministerial proceedings and, therefore, … it is not a final order over which we have appellate jurisdiction."); In re Media Group, Inc., 342 Fed. Appx. 349 (9th Cir. 2009) (BAP decision which remanded for a redetermination of the amount of the sanction was a final order; therefore, the decision was no longer appealable following the bankruptcy court's decision on remand and the court of appeals lacked jurisdiction to review the issues decided on remand); Moglia v. Pacific Employers Ins. Co. of North America, 547 F.3d 835, 837, 50 Bankr. Ct. Dec. (CRR) 222 (7th Cir. 2008) (bankruptcy court order requiring arbitration of an insurance dispute before resolution of an advisory proceeding is not a final appealable order; "A pro-arbitration decision, coupled with a stay (rather than a dismissal) of the suit, is not appealable."); In re Rosson, 545 F.3d 764, 60 Collier Bankr. Cas. 2d (MB) 587, Bankr. L. Rep. (CCH) P 81326 (9th Cir. 2008) (deciding as a matter of first impression that an order converting a case to Chapter 7 is a final order); In re Donovan, 532 F.3d 1134, Bankr. L. Rep. (CCH) P 81276 (11th Cir. 2008) (deciding as a matter of first impression that an order denying a motion to dismiss under § 707(b) is not a final order; denying a motion to dismiss merely lets the case continue); In re Wiersma, 483 F.3d 933, 48 Bankr. Ct. Dec. (CRR) 15 (9th Cir. 2007), for additional opinion, see, 227 Fed. Appx. 603 (9th Cir. 2007) (determination of secured status of bank's lien on proceeds is a final order although confirmation of plan denied); In re Stephens, 172 Fed. Appx. 685 (8th Cir. 2006) (bankruptcy court order reopening a case is not a final order); In re Computer Learning Centers, Inc., 407 F.3d 656, 44 Bankr. Ct. Dec. (CRR) 200, 54 Collier Bankr. Cas. 2d (MB) 177, Bankr. L. Rep. (CCH) P 80284 (4th Cir. 2005) (interim award of attorney's fees is not a final order); In re Natale, 295 F.3d 375 (3d Cir. 2002) (discussing generally finality of various bankruptcy court orders); Matter of Wade, 991 F.2d 402, 24 Bankr. Ct. Dec. (CRR) 210, 28 Collier Bankr. Cas. 2d (MB) 1253, Bankr. L. Rep. (CCH) P 75216 (7th Cir. 1993) (order closing bankruptcy case is

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final); In re Fugazy Exp., Inc., 982 F.2d 769, Bankr. L. Rep. (CCH) P 75058 (2d Cir. 1992) (order requiring an accounting is not final); Matter of Greene County Hosp., 835 F.2d 589, 18 Collier Bankr. Cas. 2d (MB) 1220 (5th Cir. 1988) (denial of a motion to dismiss is not a final order); Matter of Hawaii Corp., 796 F.2d 1139 (9th Cir. 1986) (turnover order is a final order where it paves the way for distribution); In re Stasz, 387 B.R. 271 (B.A.P. 9th Cir. 2008) (distinguishing between a civil contempt order issued in a civil contempt proceeding (final) and a civil contempt order issued in an adversary proceeding (nonfinal); In re Robotic Vision Systems, Inc., 367 B.R. 232, 47 Bankr. Ct. Dec. (CRR) 271 (B.A.P. 1st Cir. 2007) (order allowing final fee application is final order); In re Gray, 447 B.R. 524 (E.D. Mich. 2011) (secured creditor could not appeal bankruptcy court's Rule 2004 order forcing it to produce documents regarding fees charged to debtor's loan on mortgage; order was not a final order); In re Rood, 426 B.R. 538 (D. Md. 2010) (order granting motion for preliminary injunctive relief to prevent dissipation of assets was not final order; grounds for granting leave to pursue interlocutory appeal were also not present); Countrywide Home Loans, Inc. v. Office of the U.S. Trustee, 2008 WL 2388285 (W.D. Pa. 2008) (explaining that normally discovery orders are interlocutory); In re Armbrust, 274 B.R. 461 (W.D. Ky. 2001) (orders transferring venue of the case or a proceeding are considered to be interlocutory and not appealable).

23 See, e.g., In re Wicheff, 215 B.R. 839 (B.A.P. 6th Cir. 1998) (bankruptcy court order granting summary judgment is final). An order denying a motion for summary judgment, however, is typically considered to be interlocutory. See, e.g., In re Saber, 264 F.3d 1317, 38 Bankr. Ct. Dec. (CRR) 127 (11th Cir. 2001) (bankruptcy court order which not only denied trustee's motion for summary judgment on fraudulent conveyance and preference grounds, but also denied defendant's cross-motion for summary judgment without quieting title to disputed property was a nonfinal order); In re CRS Steam, Inc., 233 B.R. 901, 34 Bankr. Ct. Dec. (CRR) 475 (B.A.P. 1st Cir. 1999) (bankruptcy court order denying summary judgment is not a final order). See also Sims v. Sunnyside Land, LLC, 425 B.R. 284 (W.D. La. 2010) (denying interlocutory appeal from orders denying motions for summary judgment even though appeal involved controlling question of law; appellants failed to show there was any substantial ground for difference of opinion with respect to controlling question other than they merely disagreed with bankruptcy court's decision).

24 See, e.g., In re Bank of New England Corp., 218 B.R. 643 (B.A.P. 1st Cir. 1998) (bankruptcy court order granting summary judgment on one count of a six-count complaint was not final).

25 Fed. R. Bank. P. 7054(b). For a discussion of this rule, see Fifth Third Bank, Indiana v. Edgar County Bank & Trust, 482 F.3d 904, 47 Bankr. Ct. Dec. (CRR) 269, Bankr. L. Rep. (CCH) P 80882 (7th Cir. 2007) (counsel erred in treating each separate count of a complaint in an adversary proceeding as a free-standing lawsuit). See also Lee-Barnes v. Puerto Ven Quarry Corp., 513 F.3d 20 (1st Cir. 2008) (trial court abused its discretion in issuing the certification and authorizing appeal from order granting partial summary judgment); In re Harrington, 992 F.2d 3, 24 Bankr. Ct. Dec. (CRR) 367, Bankr. L. Rep. (CCH) P 75241 (1st Cir. 1993) (appeal in civil action may not normally be taken until all claims of all parties to the action have been finally resolved).

The circuit courts have ruled that any order granting partial disposition of an adversary proceeding is not final in the absence of strict compliance with Bankruptcy Rule 7054(b). See In re Baines, 528 F.3d 806, Bankr. L. Rep. (CCH) P 81268 (10th Cir. 2008) (circuit court does not have jurisdiction to hear district court's affirmance of a bankruptcy court's entry of summary judgment on fewer than all claims asserted because district court decision did not result in entry of final judgment); In re Boca Arena, Inc., 184 F.3d 1285, 34 Bankr. Ct. Dec. (CRR) 1099, 44 Fed. R. Serv. 3d 720 (11th Cir. 1999) (court of appeals was not permitted to ignore Bankruptcy Rule 7054; the court lacked jurisdiction to hear an appeal from district court affirmance of a nonfinal order of bankruptcy court disposing of fewer than all the parties in adversary proceeding); In re Millers Cove Energy Co., Inc., 128 F.3d 449, 39 Fed. R. Serv. 3d 179, 1997 FED App. 0316P (6th Cir. 1997) (a partial disposition by a district court in bankruptcy is considered nonfinal for the purposes of appeal, unless the finality of the partial disposition is certified under Rule 54(b)); In re Chateaugay Corp., 922 F.2d 86, 21 Bankr. Ct. Dec. (CRR) 355, 13 Employee Benefits Cas. (BNA) 1283 (2d Cir. 1990) (court of appeals lacked jurisdiction over bankruptcy court's interlocutory orders granting partial summary judgment; appeal

dismissed without prejudice to give parties an opportunity to comply with the technical requirements of Rule 54(b)); In re Durability, Inc., 893 F.2d 264, 19 Bankr. Ct. Dec. (CRR) 1954 (10th Cir. 1990) (appellant given 30 days to avoid dismissal of appeal either by presenting the court of appeals with a 54(b) certification or an order of judgment explicitly reflecting the adjudication of all remaining claims of the bankruptcy court's grant of partial summary judgment); Matter of Wood and Locker, Inc., 868 F.2d 139, 144, 19 Bankr. Ct. Dec. (CRR) 395, 20 Collier Bankr. Cas. 2d (MB) 920, Bankr. L. Rep. (CCH) P 72819 (5th Cir. 1989) ("[G]iven the clear mandate of Bankruptcy Rule 7054, no appeal may be taken from a bankruptcy court order that adjudicates fewer than all of the claims or the rights and liabilities of fewer than all of the parties in an adversary proceeding absent Rule 54(b) certification—even if the order would be considered final if it arose in another context."); Matter of King City Transit Mix, Inc., 738 F.2d 1065, Bankr. L. Rep. (CCH) P 69960 (9th Cir. 1984) (court of appeals only has jurisdiction to review matters appealed to district court as a matter of right; court of appeals lacked jurisdiction to review district court's decision because bankruptcy court's order was interlocutory in nature and reviewable by the district court only as matter of discretion, not a matter of right); In re Fuentes, 417 B.R. 844, 62 Collier Bankr. Cas. 2d (MB) 1188 (B.A.P. 1st Cir. 2009) (noting that First Circuit strongly disfavors Rule 54(b) judgments; such partial judgments should be entered sparingly and only when the lower court expressly enumerates its reasons for doing so); In re Hicks, 369 B.R. 420, 422 (B.A.P. 8th Cir. 2007) ("The rule does contain a proviso for the entry of a judgment at an intermediate stage of the adversary proceeding, but only if the bankruptcy court determines that there is no just reason for delay and upon an express direction for the entry of a judgment. The sole purpose of a Rule 54(b) order is to provide an opportunity to appeal claims affecting some, but not all of the parties or some, but not all of the issues."); In re Trinsum Group, Inc., 467 B.R. 734, 56 Bankr. Ct. Dec. (CRR) 82 (Bankr. S.D. N.Y. 2012) (dismissal order entered by bankruptcy court in an adversary proceeding was an interlocutory order with respect to defendants that had not consented to the court's adjudication of those claims it could not otherwise finally decide since the order did not dispose of all of the claims in the complaint).

26 Fed. R. Bankr. P. 7054(b). See In re Hicks, 369 B.R. 420 (B.A.P. 8th Cir. 2007) (bankruptcy court order granted summary judgment on fewer than all issues and the appellants filed an appeal more than 10 days after judgment was entered on the order; the appeal was both too early and too late; it was too early because the bankruptcy court had entered judgment on what was clearly a partial summary judgment without making the requisite determination; thus, the order appealed from was always subject to be changed until a single judgment was entered resolving all claims against all parties; the appeal was also too late because the notice of appeal was filed beyond the 10 days in Rule 8002).

27 See § 2:43 for a more extensive discussion of summary judgments. See also In re Saber, 264 F.3d 1317, 38 Bankr. Ct. Dec. (CRR) 127 (11th Cir. 2001) (multiple-count complaint); In re Bank of New England Corp., 218 B.R. 643 (B.A.P. 1st Cir. 1998) (multiple-count complaint); In re Strong, 293 B.R. 764, 768 (B.A.P. 8th Cir. 2003) (citing In re BTR Partnership, 292 B.R. 188, 193, 55 Fed. R. Serv. 3d 647 (D. Neb. 2003)) ("[A] bankruptcy order that disposes of fewer than all claims or parties in an adversary proceeding is not immediately appealable unless the bankruptcy judge certifies the order for immediate review pursuant to Bankruptcy Rule 7054, which incorporates Fed. R. Civ. P. 54(b).").

28 See In re Bank of New England Corp., 218 B.R. 643 (B.A.P. 1st Cir. 1998), for a detailed discussion of all three precepts.

29 Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949) (collateral order doctrine applies where decision falls in "class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated."). See also Cunningham v. Hamilton County, Ohio, 527 U.S. 198, 119 S. Ct. 1915, 144 L. Ed. 2d 184, 43 Fed. R. Serv. 3d 739 (1999) (taking a narrow view of the doctrine and cautioning that courts should not attempt to carve out specific categories of exceptions to the general rule that discovery orders are not ordinarily appealable); Digital Equipment Corp. v. Desktop Direct, Inc., 511 U.S. 863, 878–79, 114 S. Ct. 1992, 128 L. Ed. 2d 842, 31 U.S.P.Q.2d 1010, 29 Fed. R. Serv. 3d 399 (1994) (discussing application of *Cohen* factors); In re Continental Inv. Corp., 637 F.2d 1, 5, Bankr. L. Rep. (CCH) P 67739, Bankr. L. Rep. (CCH) P 67804, Fed.

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Sec. L. Rep. (CCH) P 97800 (1st Cir. 1980) ("These requisites may be summarized as separability, finality, urgency, and importance."); U.S. v. Sorren, 605 F.2d 1211, 1213 (1st Cir. 1979) (listing factors).

30 See In re Worldcom, Inc., 2005 WL 1208519 (S.D. N.Y. 2005) (setting forth the three requirements of *Cohen* and holding that a bankruptcy court order referring plaintiff's claims to the FCC does not meet the third part of the test). See also In re McIntyre, 857 Fed. Appx. 980 (10th Cir. 2021) (discussing finality in the bankruptcy context and denying use of the collateral-order doctrine); Bailey v. Connolly, 361 Fed. Appx. 942, 52 Bankr. Ct. Dec. (CRR) 178 (10th Cir. 2010) (order requiring corporate Chapter 11 debtor's business associate to file ownership statement was not a final appealable order and order was not immediately appealable under *Cohen* collateral order doctrine); Lee-Barnes v. Puerto Ven Quarry Corp., 513 F.3d 20 (1st Cir. 2008) (collateral order doctrine did not apply to permit appeal from an interlocutory order which declared a prejudgment surety bond posted by debtor to be null and void); In re Harrington, 992 F.2d 3, 24 Bankr. Ct. Dec. (CRR) 367, Bankr. L. Rep. (CCH) P 75241 (1st Cir. 1993) (collateral order doctrine is not available unless the challenged interlocutory ruling would result in irreparable harm incapable of vindication on appeal from a later judgment); Moran v. Official Committee of Administrative Claimants, 2006 WL 3253128 (N.D. Ohio 2006), judgment aff'd, 560 F.3d 449, 51 Bankr. Ct. Dec. (CRR) 112 (6th Cir. 2009) (standing order which authorized creditors' committee to pursue litigation against debtors' officers was not a final order, would not be granted interlocutory appeal, and failed the stringent requirements for establishing the collateral order exception; order involved issues which were not separate from the merits of the underlying transaction); In re Adelphia Communications Corp., 333 B.R. 649, 658 (S.D. N.Y. 2005) (setting forth the factors, as well as the exceptional circumstances test); In re Enron Corp., 316 B.R. 767, 43 Bankr. Ct. Dec. (CRR) 252 (S.D. N.Y. 2004) (refusing to apply the collateral order doctrine with respect to an order staying arbitration because affirmance would not have expedited the litigation and reversal was likely to complicate it).

But see Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 714, 116 S. Ct. 1712, 135 L. Ed. 2d 1 (1996) (a stay order is immediately appealable because it puts the party effectively out of court); In re Carco Electronics, 536 F.3d 211, 50 Bankr. Ct. Dec. (CRR) 79, 87 U.S.P.Q.2d 1637 (3d Cir. 2008) (discovery order relating to a trade secret, while not final, is immediately appealable under the collateral order rule; affirming its prior decision to that effect in Smith v. BIC Corp., 869 F.2d 194, 16 Media L. Rep. (BNA) 1286, 10 U.S.P.Q.2d 1052, 13 Fed. R. Serv. 3d 181 (3d Cir. 1989), and acknowledging the several circuit court decisions holding otherwise); In re Tri-Valley Distributing, Inc., 533 F.3d 1209, 1216, 50 Bankr. Ct. Dec. (CRR) 58 (10th Cir. 2008) (citing Mt. McKinley Ins. Co. v. Corning Inc., 399 F.3d 436, 44 Bankr. Ct. Dec. (CRR) 67 (2d Cir. 2005)) ("Ordinarily, a decision to abstain satisfies the collateral-order doctrine."); Norwest Bank Wisconsin, N.A. v. Malachi Corp., 245 Fed. Appx. 488, 492 (6th Cir. 2007) (a district court order finally determining the manner in which certain receivership assets should be distributed could be immediately reviewed because the distribution order would likely be unreviewable on final appeal); In re Teleglobe Communications Corp., 493 F.3d 345 (3d Cir. 2007), as amended, (Oct. 12, 2007) (order requiring production of privileged documents was immediately appealable under the collateral order doctrine).

31 Richardson-Merrell, Inc. v. Koller, 472 U.S. 424, 105 S. Ct. 2757, 86 L. Ed. 2d 340 (1985) (collateral order doctrine is a narrow exception to final judgment rule, whose reach is limited to trial court orders affecting rights that will be irretrievably lost without immediate appeal). See also Flores Rentals, L.L.C. v. Flores, 283 Kan. 476, 153 P.3d 523 (2007), as modified, (May 11, 2007) (discussing *Richardson-Merrell* and finding that order disqualifying counsel, although imposing additional litigation cost, did not fall within exception).

32 Richardson-Merrell, Inc. v. Koller, 472 U.S. 424, 436, 105 S. Ct. 2757, 86 L. Ed. 2d 340 (1985) ("the possibility that a ruling may be erroneous and may impose additional litigation expense is not sufficient to set aside the finality requirement imposed by Congress"). See also Germain v. Connecticut Nat. Bank, 930 F.2d 1038, 1040, 21 Bankr. Ct. Dec. (CRR) 1027, Bankr. L. Rep. (CCH) P 73907, 19 Fed. R. Serv. 3d 896 (2d Cir. 1991) (it is not enough "that postponement of vindication may ultimately prove less efficient than an immediate review, or that ultimate vindication may require a second trial before a different trier of fact.").

33 28 U.S.C.A. § 158(a)(3). See, e.g., In re Red River Energy, Inc., 415 B.R. 280 (S.D. Tex. 2009) (request for interlocutory appeal denied; the appellant failed to demonstrate that any court had interpreted the relevant

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legal principle different from the position taken by the bankruptcy court and failed to show that immediate appeal would materially advance the ultimate termination of the bankruptcy litigation); In re Beale, 410 B.R. 613 (N.D. Ill. 2009) (no interlocutory appeal from an order striking a jury demand; a remedy, if needed, could be given in an appeal after trial on the merits); In re Traversa, 371 B.R. 1 (D. Conn. 2007) (appeal from bankruptcy court order denying a party's request to seal documents denied; the relief sought did not include a controlling question of law and granting interlocutory appeal would not materially advance the ultimate termination of the litigation); In re Hello Corp. of Pennsylvania, Inc., 2006 WL 1983214 (W.D. Pa. 2006) (unlike § 1292, § 158(a)(3) provides no guidance regarding the appropriate standard courts should apply in determining whether leave to appeal should be granted; therefore, courts apply the standards set forth in § 1292(b); no interlocutory relief from bankruptcy court order granting landlord an administrative expense for so-called "stub period rent"); In re Worldcom, Inc., 2005 WL 1208519 (S.D. N.Y. 2005) (discussing the several routes for seeking appellate review of an interlocutory order); In re Adelphia Communications Corp., 333 B.R. 649, 657 (S.D. N.Y. 2005) ("Appeals from non-final bankruptcy court orders may be taken under the collateral order doctrine, or pursuant to section 158(a)(3) of title 28 of the United States Code."); In re Sandenhill, Inc., 304 B.R. 692 (E.D. Pa. 2004) (courts should use the three-part test).

34 See, e.g., In re Kassover, 343 F.3d 91, 41 Bankr. Ct. Dec. (CRR) 235, Bankr. L. Rep. (CCH) P 78912 (2d Cir. 2003) (citing cases; district court here exercised its discretion to deny leave to appeal the interlocutory order); In re Saxman, 325 F.3d 1168, 50 Collier Bankr. Cas. 2d (MB) 550, 175 Ed. Law Rep. 134, Bankr. L. Rep. (CCH) P 78830 (9th Cir. 2003) (citing cases and criticizing a liberal standard of finality).

35 28 U.S.C.A. § 1292.

36 28 U.S.C.A. § 1292(a).

37 28 U.S.C.A. § 1292(b).

38 28 U.S.C.A. § 1292(b).

39 28 U.S.C.A. § 1292(b). For a discussion of whether a Bankruptcy Appellate Panel can similarly certify an interlocutory order, see In re Ransom, 380 B.R. 809, 59 Collier Bankr. Cas. 2d (MB) 479, Bankr. L. Rep. (CCH) P 81087 (B.A.P. 9th Cir. 2007) (BAP may certify appeal of interlocutory order notwithstanding its affirmance of bankruptcy court's decision).

40 See Forgay v. Conrad, 47 U.S. 201, 6 How. 201, 12 L. Ed. 404, 1848 WL 6439 (1848).

41 In re American Colonial Broadcasting Corp., 758 F.2d 794, 803, 12 Bankr. Ct. Dec. (CRR) 1301, 12 Collier Bankr. Cas. 2d (MB) 799, Bankr. L. Rep. (CCH) P 70367 (1st Cir. 1985).

42 See, e.g., 28 U.S.C.A. § 1334(d) (permissive abstention under 28 U.S.C.A. § 1334(c)(1) is not reviewable on appeal); 11 U.S.C.A. § 305 (decision to abstain from the case). See also discussion in § 2:20.

43 28 U.S.C.A. § 1651 ("The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.").

44 Miller v. French, 530 U.S. 327, 339, 120 S. Ct. 2246, 147 L. Ed. 2d 326 (2000) ("mandamus is an extraordinary remedy that is 'granted only in the exercise of sound discretion'" (quoting Whitehouse v. Illinois Cent. R. Co., 349 U.S. 366, 373, 75 S. Ct. 845, 99 L. Ed. 1155, 36 L.R.R.M. (BNA) 2203, 28 Lab. Cas. (CCH) P 69246 (1955)). See also In re Federal-Mogul Global, Inc., 300 F.3d 368 (3d Cir. 2002) (mandamus is granted only in the exercise of sound discretion).

45 See, e.g., In re Ozenne, 841 F.3d 810, 63 Bankr. Ct. Dec. (CRR) 85, Bankr. L. Rep. (CCH) P 83033 (9th Cir. 2016) (on rehearing en banc, debtor who did not timely appeal bankruptcy court's denial of motion for sanctions for alleged violation of automatic stay could not utilize petition for writ of mandamus as substitute for timely appeal; requirements for issuance of writ of mandamus were not satisfied); Carteret Sav. Bank,

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F.A. v. Shushan, 919 F.2d 225, 18 Fed. R. Serv. 3d 841 (3d Cir. 1990) (mandamus appropriate where district court exceeded its authority when it compelled plaintiff to accept transfer against its wishes). See Timothy P. Glynn, Discontent and Indiscretion: Discretionary Review of Interlocutory Orders, 77 Notre Dame L. Rev. 175, 199 (2001) (circuit courts vary regarding this "clear and indisputable right" requirement, "but virtually all suggest that some blatant or unconscionable misstep by the district court is needed"; some courts require proof of usurpation of power; some require a shocking abuse of discretion, exercise of power, increase of jurisdiction, or other outrageous behavior; and the Ninth Circuit has a less stringent standard).

46 See Kerr v. U. S. Dist. Court for Northern Dist. of California, 426 U.S. 394, 402, 96 S. Ct. 2119, 48 L. Ed. 2d 725, 21 Fed. R. Serv. 2d 1021 (1976) (mandamus inappropriate where petitioners had avenues short of mandamus to achieve precisely the relief they sought); Will v. U.S., 389 U.S. 90, 95, 88 S. Ct. 269, 19 L. Ed. 2d 305, 67-2 U.S. Tax Cas. (CCH) P 9726, 20 A.F.T.R.2d 5743 (1967) (citing examples of "usurpation of power"); In re Syncora Guarantee Inc., 757 F.3d 511, 59 Bankr. Ct. Dec. (CRR) 191 (6th Cir. 2014) (granting mandamus relief to insurer in city's bankruptcy); In re Marasek, 537 Fed. Appx. 20 (3d Cir. 2013) (denying debtors' petition for writ of mandamus where debtors provided no basis for holding that bankruptcy judge's denial of their recusal motion was improper).

47 See, e.g., In re Chambers Development Co., Inc., 148 F.3d 214 (3d Cir. 1998) (writ should not be issued where relief is available through ordinary appeal); Boughton v. Cotter Corp., 10 F.3d 746, 27 Fed. R. Serv. 3d 1368 (10th Cir. 1993) (describing instances where writ should issue).

48 In re Federal-Mogul Global, Inc., 300 F.3d 368 (3d Cir. 2002).

49 The court also held that, if the order were construed as one remanding the cases, 28 U.S.C.A. § 1452(b) barred both appellate and mandamus review of a remand order. See also Matter of U.S. Brass Corp., 110 F.3d 1261, 1266, 30 Bankr. Ct. Dec. (CRR) 778 (7th Cir. 1997) ("section 1452(b) bars review by appeal or otherwise, which would seem to take in mandamus, which anyway is available only when the applicant's right to it is clear."). See also discussion in § 2:20.

50 In re Canter, 299 F.3d 1150, 1153, 40 Bankr. Ct. Dec. (CRR) 22, 48 Collier Bankr. Cas. 2d (MB) 1042 (9th Cir. 2002). The court, relying on In re Pruitt, 910 F.2d 1160, 23 Collier Bankr. Cas. 2d (MB) 721, Bankr. L. Rep. (CCH) P 73581 (3d Cir. 1990), held that the order withdrawing the reference under 28 U.S.C.A. § 157(d) was interlocutory and not reviewable on appeal, regardless of whether it was sua sponte. "We see no logical basis for distinguishing between withdrawal of reference at the request of a party and sua sponte withdrawal of reference." See also Caldwell-Baker Co. v. Parsons, 392 F.3d 886, 44 Bankr. Ct. Dec. (CRR) 13 (7th Cir. 2004) (order deciding to withdraw the reference is interlocutory). But see In re Ozenne, 841 F.3d 810, 63 Bankr. Ct. Dec. (CRR) 85, Bankr. L. Rep. (CCH) P 83033 (9th Cir. 2016) (on rehearing en banc, debtor who did not timely appeal bankruptcy court's denial of motion for sanctions for alleged violation of automatic stay could not utilize petition for writ of mandamus as substitute for timely appeal; requirements for issuance of writ of mandamus were not satisfied).

51 These factors were also listed in, e.g., SG Cowen Securities Corp. v. U.S. Dist. Court for Northern Dist. of CA, 189 F.3d 909, 913, Fed. Sec. L. Rep. (CCH) P 90,625, 44 Fed. R. Serv. 3d 953 (9th Cir. 1999) (these factors "should be weighted together based on the facts of the individual case"); U.S. v. Amlani, 169 F.3d 1189, 1194, 51 Fed. R. Evid. Serv. 862 (9th Cir. 1999) (the application of these factors is "by no means precise").

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