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Bankruptcy Appeals: A Guide For Pro Se Filers



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The purpose of this pamphlet is to briefly explain to pro se individuals the process for filing an appeal of a bankruptcy order. The information contained in this pamphlet applies to people who would appeal in the US Bankruptcy Court of the Southern District of New York (SDNY), which covers residents living in the New York (Manhattan) Bronx, Westchester, Rockland, Putnam, Orange, Dutchess, and Sullivan counties, or in the US Bankruptcy Court of the Eastern District of New York (EDNY), which covers Brooklyn, Queens, Staten Island, and Long Island. Residents of any other county or state should consult with legal advisors familiar with those laws because certain applicable local laws may vary.

Generally, the appeal process allows a higher court to review the rulings made by a lower court and to correct the lower court's mistakes and oversights when applicable. In the bankruptcy context, the decisions and rulings made by the Bankruptcy Courts in the districts in which they are located. For example, an appeal from the Bankruptcy Court for SDNY would be appealed to the District Court for the Southern District of New York and so forth.

The main parties involved are the appellant (known as the petitioner) and the appellee (known as the respondent). The appellant initiates the appeal seeking to overturn the lower court's decision, while the appellee responds. Generally, a bankruptcy appeal involves six steps: filing an appeal, motion practices, designating the record, briefing, oral arguments, and decision. When hearing a bankruptcy appeal, the District Court uses a different "standard of review" to determine how much deference it will give to the Bankruptcy Court's ruling. For example, it will only overturn the Bankruptcy Court's factual findings when there is a "clear error," but will not give any deference to the Bankruptcy Court's legal conclusions. However, it is important to understand that an appeal is not meant to be a second opportunity to try the same issue, and the appellant (usually the losing side in the Bankruptcy Court) will not get to introduce new evidence or otherwise establish a different factual record in the District Court.

WHAT TYPE OF BANKRUPTCY ORDERS CAN BE APPEALED?

Sometimes, the Bankruptcy Court makes a decision that doesn't fully settle the case or proceeding within a case. This type of decision is called an "interlocutory" order. A "final" order, on the other hand, is a decision that ends the case or the proceeding within the case.

EXAMPLES OF INTERLOCUTORY ORDERS

- Denying approval of a Chapter 13 repayment plan
- Denying a request to switch a case from Chapter 13 to Chapter 7
- Deciding that a creditor's rights are protected
- Denying a request to dismiss the case

EXAMPLES OF FINAL ORDERS

- Granting or denying a request to lift the automatic stay
- Approving the sale of property
- Dismissing the case
- Allowing or denying a claimed exemption
- Canceling a mortgage under certain laws

If the order is final, you have the right to appeal it. If the order is interlocutory, the District Court doesn't have to accept the appeal. In that case, you must file a motion for leave to appeal, which is a formal request asking the court to allow the appeal. This should be filed at the same time as your Notice of Appeal.

The motion for leave to appeal request should include:

- A brief summary of the facts,
- The legal question you're asking the court to review,
- What result you want from the appeal,
- Why the appeal is important, and
- A copy of the order and any written explanations from the Bankruptcy Court.

If the District Court decides that the order is interlocutory but you didn't file a motion for leave to appeal, the court might ask you to file one or treat your Notice of Appeal as if you had.

The District Court may agree to hear an interlocutory appeal only if all three of these are true:

- The appeal involves an important legal question,
- There is real disagreement about how the law applies, and
- Deciding the issue now could help move the case toward a faster resolution.

WHEN DO I NEED TO FILE AN APPEAL?

You must file a Notice of Appeal and any other required documents within 14 days after the Bankruptcy Court enters the order or ruling you want to appeal.

HOW DO I FILE AN APPEAL?

In the Southern District of New York (SDNY):

Residents of New York (Manhattan). Bronx, Westchester, Rockland, Putnam, Orange, Dutchess, and Sullivan Counties

1. Complete the forms:

- Fill out the Notice of Appeal (Form 417A) and the Civil Cover Sheet.
- On the Civil Cover Sheet:
 - For “Nature of Suit” write “**422 Appeal 28 U.S.C. 158**”
 - For “Basis for Jurisdiction” write “**Federal Question**”

2. Check if a special condition applies:

- If the order is not final (called “interlocutory”), consider filing a motion for leave to appeal (see Section 3).
- If your appeal is related to a different one already pending, consider filing a Statement of Relatedness.

3. File your documents:

- Submit one (1) Notice of Appeal, one (1) original and three (3) copies of the Civil Cover Sheet, and any additional documents using the court’s pro se filing portal.

4. Pay the filing fee (\$298.00):

- You may call the Clerk’s Office at the court pertaining to your county.
- Or, you can file a Motion to Proceed In Forma Pauperis to request a fee waiver.

In the Eastern District of New York (EDNY):

Residents of Brooklyn, Queens, Staten Island, Nassau and Suffolk Counties

1. Complete the forms:

- Fill out the Notice of Appeal (Form 417A) and the Civil Cover Sheet (same instructions as above).

2. Check for special conditions:

- If the order is “interlocutory,” consider filing a motion for leave to appeal.

3. File your documents:

- Submit one (1) Notice of Appeal, one (1) Civil Cover Sheet, one (1) copy of the Bankruptcy Court order, and any other documents through the pro se filing portal.

4. Pay the filing fee (\$298.00):

- Send a money order or certified check (payable to “Clerk, U.S. Bankruptcy Court”) to the Brooklyn or Central Islip courthouse.
- Or, you may file a request to proceed without paying fees.

WHAT IS A “MOTION FOR LEAVE TO APPEAL” AND WHY IS IT IMPORTANT?

While appeal of a final order is as of right, appeal of an interlocutory order is at the discretion of the District Court and generally discouraged. If you appeal an interlocutory order, you must file along with with the Notice of Appeal, a **motion for leave to appeal** to explain to the District Court why an interlocutory appeal is necessary. If the District Court determines that the appealed order is interlocutory, but the appellant did not file motion for leave to appeal, the District Court may order the appellant to file one or treat the Notice of Appeal as one.

The motion for leave to appeal must include:

- The facts necessary to understand the legal question involved;
- The legal question itself ;
 - For example, if the interlocutory order being appealed is an order denying approval of a chapter 13 plan, the legal question on appeal may be "whether the bankruptcy court err in denying approval of the chapter 13 plan?"
- A statement detailing the relief you're asking for;
- The reason why the leave to appeal should be granted; and
- A copy of the interlocutory order and any related opinion.

If the District Court determines that the appealed order is interlocutory, but the appellant did not file motion for leave to appeal, the District Court may order the appellant to file one or treat the Notice of Appeal as one.

The court will only allow the appeal if you meet all three conditions below:

1. It involves an important legal issue that can affect the outcome of the case,
2. There exists substantial ground for disagreement on the legal issue (this typically means that there are conflicting authorities on the issue or the issue is particularly difficult and is a matter of first impression for the court), and
3. An immediate decision would help resolve the case faster.



WHAT IS A “MOTION TO STAY PENDING APPEAL” AND WHY IS IT IMPORTANT?

Filing an appeal in the District Court, by itself, does not stop the Bankruptcy Court’s order from taking effect. It remains binding on all parties until the District Court has reversed, vacated, or otherwise modified it at the end of the appeal. To pause the order while your appeal is pending, you may need to file a **motion to stay** the Bankruptcy Court’s order, which if granted, will prevent the order from taking effect, as well as any actions or relief granted in the Bankruptcy Order, while the appeal is pending. This is particularly crucial for orders that involve property interests, such as:

- Authorizing the sale of specific estate properties
- Lifting the automatic stay to permit a lender to foreclose



If the order is not stayed and the sale or action happens, your appeal might become moot (no longer valid). You should file the motion to stay in Bankruptcy Court first. If they deny or don’t act, you may then file it in the District Court.

The motion to stay must include:

Reasons for the request and supporting facts,
Sworn statements or affidavits supporting the facts subject to dispute, and
Important parts of the record.

WHAT IS THE “RECORD ON APPEAL,” WHY IS IT IMPORTANT AND HOW DO I DESIGNATE IT?

The **record on appeal** tells the District Court what happened in the Bankruptcy Court.

Within 14 days after either:

- Filing your Notice of Appeal (for final orders), or
- Being granted leave to appeal (for interlocutory orders),

You must file, either together or separately:

- A designation of items to include in the record, and
- A statement of issues to be reviewed.

The statement of issues lays out the issues the appellant wants the District Court to review. The District Court only reviews what is in the record, so include everything the Bankruptcy Court used to make its decision.

After the you and the appellee (other side) submit their designations, the Bankruptcy Court clerk will prepare and send the full record to the District Court.

This record includes:

- The docket,
- Your designated items,
- The Notice of Appeal,
- The order being appealed, and
- Any related opinions or rulings.



WHAT IS A BRIEF AND WHAT SHOULD IT INCLUDE?

A **brief** is your written argument explaining why the District Court should change the Bankruptcy Court's decision. You must file it within 30 days after the record on appeal is sent to the District Court. To the extent possible, you should comply with the formatting requirements set forth in rule 8015 of the Federal Rules of Bankruptcy Procedures, including a 30-page page limit, and a 13,000-word limit.



The brief should include:

The issues being reviewed

A short summary of the case facts and history

Your main arguments, with references to laws and the record

A short conclusion stating what you want the court to do

After the brief is filed:

The appellee has 30 days to respond.

You then have 14 days to file a reply brief (if you choose), but it must be filed at least 7 days before the scheduled oral argument.

WHAT HAPPENS DURING THE ORAL ARGUMENT?

You will present your argument to the judge of the District Court during oral argument. Oral argument will be scheduled in every case **unless the District Judge, based on the briefs and the record on appeal, determines that:**

- The appeal is clearly without merit,
- The legal issue has already been decided in another case, or
- The briefs already clearly explain everything.

The District Court will advise all parties of the date, time, and place for oral argument, and the time allowed for each side. The appellant (you) will speak first and last. If one side doesn't show up, the court can still hear the other side.



WHAT OTHER RESOURCES ARE AVAILABLE TO PRO SE APPELLANTS?

SDNY, Bronx and Manhattan residents

- The SDNY Bankruptcy Court has an **appeals guideline** on their website.
- City Bar Justice Center's **SDNY FedPro Project** provides general guidance on federal law and court procedures, help explain court orders, and check drafted documents and letters to the court to make sure they follow the rules. This project has limited capacity and does not provide representation.

EDNY, Brooklyn, Queens, Staten Island residents

- The EDNY Bankruptcy Court has an **appeals guideline** on their website.



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The publication should not be interpreted as a complete outline of the bankruptcy process. It is urged that any party wishing to file for bankruptcy seek bankruptcy advice from an attorney knowledgeable with bankruptcy appeals before filing.

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