



BANKRUPTCY APPEALS IN GUAM AND THE CNMI

**Hon. Robert J. Faris
U.S. Bankruptcy Judge**

What Rules Govern?

- The FRAPs control appeals to court of appeals from district court exercising direct jurisdiction. FRAP 6(a).
- FRBP 8001-8028 only apply if the district court is hearing an appeal from a bankruptcy court.
- Because there is no separate bankruptcy court in Guam or the CNMI, the FRBPs never apply.
- But bankruptcy appeals still differ from other civil appeals.

What Orders are Appealable?

- Only “final judgments,” under the standard definition. *Klestadt & Winters, LLP, v. Cangelosi*, 672 F.3d 809 (9th Cir. 2012), citing *Cannon v. Hawaii Corp. (In re Hawaii Corp.)*, 796 F.2d 1139, 1141 (9th Cir. 1986). See 28 U.S.C. § 1291.
- Looser “flexible finality” standard only applies to appeals that originated in a bankruptcy court. *Prestige Limited Partnership – Concord v. East Bay Car Wash Partners (In re Prestige Limited Partnership – Concord)*, 234 F.3d 1108 (9th Cir. 2000).

What If Your Order Is Not “Final”?

- Seek interlocutory review under 28 U.S.C. § 1292(b), by:
 - Asking district judge to certify that the “order involves 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,” and then
 - Asking court of appeals to allow an interlocutory appeal.
- This is hard to do. Interlocutory appeals are disfavored

When Is Notice of Appeal Due?

- Within 30 days after entry of judgment. FRAP 4(a).
- Extension or reopening may be available under FRAP 4(a)(5) or (6).
- Filing too soon is not a problem. FRAP 4(a)(2).
- 14 day period of FRBP 8002(a) does not apply in Guam and the CNMI.

Who Can Appeal?

- “Only those persons who are directly and adversely affected pecuniarily by an order of the bankruptcy court have been held to have standing to appeal that order. Thus, a hopelessly insolvent debtor does not have standing to appeal orders affecting the size of the estate. Such an order would not diminish the debtor's property, increase his burdens, or detrimentally affect his rights.” *In re Fondiller*, 707 F.2d 441, 442 (9th Cir. 1983)
- A person who had notice and didn't object usually can't appeal successfully.
- Parties usually can't raise new objections and arguments on appeal.

Is The Designation of Record Important?

- Heck yeah!

How Can I Get A Stay Pending Appeal?

- Usually, party must ask the district court for a stay before asking the appellate court. FRAP 8(a)
- Movant must either:
 - Provide adequate security; or
 - Meet the standard for a preliminary injunction (likelihood of success on appeal plus balance of hardships tilts in favor of movant).
- Both options are hard.
 - Bonds are expensive.
 - The preliminary injunction standard is strict.

What Could Happen If I Don't Get A Stay Pending Appeal?

- District court's order can be carried out.
 - For example, an approved sale could close, a confirmed plan could be consummated, a money judgment could be enforced, etc.
- Appeal could be rendered moot.
 - Constitutional mootness (if there is no more "case or controversy").
 - Equitable mootness (if unwinding the transaction would be too hard).
 - Statutory mootness (§ 363(m)).

Tips For Briefing

- Briefs are much more important than oral argument.
- Think ahead: plan your appellate approach while you are in the trial court, raise objections, build record.
- Pay attention to the standard of review. Explain why errors require reversal.
- Record and legal cites must be accurate.
- Write, then rewrite, then rewrite again.
- Briefs should be brief, but rarely are.

Tips For Oral Argument

- If you write a good brief, oral argument will be easier.
- Think of the questions you really wish the judges won't ask, and then prepare the best possible answer.
- Don't try to conceal the weak spots. Concede if necessary.
- Answering the panel's questions is much more important than delivering a lecture.
- Practice, rehearse, and practice some more.

QUESTIONS?