

Practical Considerations in Bankruptcy Appeals



Practical Considerations in Bankruptcy Appeals



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Practical Considerations in Bankruptcy Appeals



THE HONORABLE STANLEY F. BIRCH, JR. (RET.)
UNITED STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT



Practical Considerations in Bankruptcy Appeals



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THE HONORABLE PAUL W. BONAPFEL
UNITED STATES BANKRUPTCY JUDGE FOR THE
NORTHERN DISTRICT OF GEORGIA



Practical Considerations in Bankruptcy Appeals



- If you have a question, feel free to utilize the Questions feature in your GoToWebinar Toolbar.



Practical Considerations in Bankruptcy Appeals

Appeals ordinarily go to District Court or BAP

- From final orders as of right
- In an adversary proceeding, final judgment ordinarily determines
- Contested matters
 - Can be complicated
 - Grant/denial of confirmation
 - Grant/denial of motions to dismiss



Practical Considerations in Bankruptcy Appeals

Appeals of interlocutory orders by leave of District Court

- File notice of appeal
- And motion for leave for interlocutory appeal



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Practical Considerations in Bankruptcy Appeals

Important Practice Pointers

- Timely filing of notice of appeal is jurisdictional
 - No timely notice of appeal, no jurisdiction
 - 14 days (*not 30 days*)
 - Time runs from the date of entry of judgment
 - It is not extended for service by mail
 - If timely post-trial motion is filed, time for appeal runs from the date of disposition of the last such motion



Practical Considerations in Bankruptcy Appeals

Part VIII of Bankruptcy Code governs appeals

- Time for filing notice of appeal and extensions of time
- Cross-appeals
- Filing and service of statement of issues and designation of record
- Time for filing and required content of briefs on appeal
- Stays pending appeal



Practical Considerations in Bankruptcy Appeals

Important Practice Pointers

- Appeal may become moot if you do not obtain a stay of the order or judgment
- Time for filing a notice of appeal to a Circuit Court from an appellate decision of the District Court or BAP is 30 days
- Federal Rules of Appellate Procedure govern appeals to the Eleventh Circuit
- You have to read ALL the rules, including, the Local Rules and Internal Operating Procedures

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Appeals to District Court Practice Pointers

- Designation of record, statement of issues
- Briefs
 - Time for filing
 - Required contents
 - Oral arguments
 - Differences between proceedings in District Court and Bankruptcy Court



Practical Considerations in Bankruptcy Appeals

Getting the record in proper order

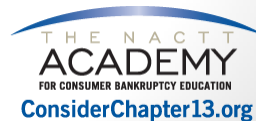
- What does the lawyer have to do?



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CREDITOR'S RIGHTS ATTORNEY



LISA RITCHEY-CRAIG
DEBTOR ATTORNEY



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Problems

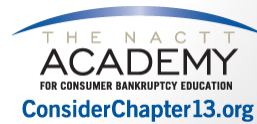
- In general
- Extensions of time



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Oral Argument

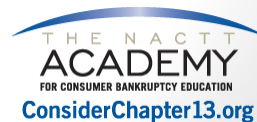
- How is it typically conducted?



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How does an appeal work its way through the system?



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JR. (RET.)

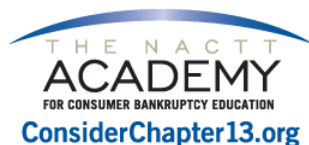
- Screening for oral argument
- Assignment of judges for motions
- Assignment of judges for determination of case
 - Non-oral argument cases
 - Oral argument cases
 - How are cases selected for oral argument?



Practical Considerations in Bankruptcy Appeals

How does an appeal work its way through the system?

- How do judges work on cases and prepare for oral argument?
- How are judges assigned to write opinion
- Petitions for rehearing, rehearing en banc (prior precedent rule)



Practical Considerations in Bankruptcy Appeals

Advocacy – drafting an effective brief

- Bankruptcy appeals are unique
 - Explain policy behind the law
 - Why is the law as it is?
- What are practical aspects of determination of the issue?



Practical Considerations in Bankruptcy Appeals

Advocacy – drafting an effective brief

- Accuracy, clarity, etc.
- Full and accurate citation to the record



Practical Considerations in Bankruptcy Appeals

Advocacy – drafting an effective brief

- Does Appellee have to negate everything that Appellant raises?



Practical Considerations in Bankruptcy Appeals

Advocacy – drafting an effective brief

- Addressing issues of first impression
 - Other circuit courts
 - Splits in bankruptcy cases
 - Discuss theory on each side



Practical Considerations in Bankruptcy Appeals

Advocacy – Oral Argument

- How to address the Court
- How important is knowledge of the record?
- Dealing with questions from the Court



Practical Considerations in Bankruptcy Appeals

Advocacy – Rebuttal



- How much time should Appellant reserve for rebuttal?
- Request for additional time
- What makes an effective rebuttal?



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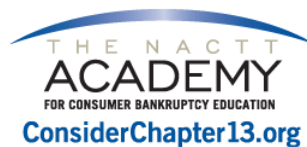
Q & A



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