

**APPEALING OUTCOMES:
INSIGHTS FROM THE
DISTRICT COURT BENCH**

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THRESHOLD CONSIDERATIONS

Should You Even Appeal?

- Not every adverse ruling merits an appeal.

Finality and Jurisdiction

- Is the order final, or does it fall within the narrow exceptions for interlocutory appeals under 28 U.S.C. § 158(a)?
- Remember: interlocutory appeals require permission from the district court first.

THRESHOLD CONSIDERATIONS

Client Counseling

- Be candid about costs, risks, and realistic timelines
- Manage expectations from the outset

Cross-Appeals

- If both parties are aggrieved, anticipate and prepare for cross-appeals
- Coordinate deadlines and issue framing carefully

JURISDICTIONAL REQUIREMENTS

Timing Is Everything.

The 14-Day Rule (FRBP 8002)

- Appeals must generally be filed within 14 days of final judgment, order or decree being appealed.
- Extensions are limited and disfavored—don't count on them

Tolling the Deadline

- A timely motion under FRBP 9023 or 9024 (reconsideration or amendment) can toll the deadline
- Emphasis on “timely”—file your motion promptly

JURISDICTIONAL REQUIREMENTS

Notice of Appeal Essentials:

File in the Right Court

- The notice goes to the bankruptcy court, not the district court or Bankruptcy Appellate Panel (BAP).

Include Required Information

- Identify the appellant clearly.
- Specify the judgment or order being appealed.
- Name the court to which appeal is taken.

Parties and Service

- Properly designate all appellees.
- Serve all parties and the U.S. Trustee.

PROTECTING YOUR CLIENT'S INTEREST

Obtaining a Stay

If the appealed order involves property or potentially irreversible action:

- Seek a stay immediately.
- File first in bankruptcy court under FRBP 8007.
- If denied, proceed to district court.
- Be prepared to post a bond.

RECORD PREPARATION

Building Your Foundation

Designate the Record

- File your designation within 14 days after the notice of appeal (or entry of an order disposing of the last remaining motion listed in Rule 8002(b), if applicable).
- Be thorough but strategic in your selections.

Order Transcripts Early

- Transcript delays can derail your briefing schedule.
- Don't let court reporters determine your timeline.

RECORD PREPARATION

Follow Local Rules

- Each district court has specific requirements for formatting, length, and procedure.
- Review them carefully before you begin drafting.

UNDERSTANDING YOUR AUDIENCE

We're Not Bankruptcy Judges

Key Insight from the Bench: “I’m not a second bankruptcy judge—I’m reviewing for legal error, not just who I agree with.”

What This Means for Your Brief:

- Your reader is a district judge or law clerk with MUCH less bankruptcy-specific familiarity.
- Explain bankruptcy terminology clearly.
- Don't assume knowledge of bankruptcy procedures.

FRAMING YOUR APPEAL

Issue Statements Matter:

Good issue framing guides judicial thinking and sets up your argument for success.

-  Bad Example: The bankruptcy court erred in sustaining the trustee's objection.
-  Good Example: The bankruptcy court erred in ruling that the debtor's interest in post-petition commissions constituted property of the estate under 11 U.S.C. § 541.

STANDARDS OF REVIEW

This Cannot Be Overstated.

Appellate judges rely heavily on standards of review. It's frustrating when counsel ignores or misstates them.

Know Your Standards:

- De novo (pure legal questions): strongest appeal chance.
- Clearly erroneous (factual findings): deferential to bankruptcy court.
- Abuse of discretion (procedural or equitable decisions): hard to win.

ISSUE SELECTION

Quality Over Quantity

Avoid the Kitchen Sink Approach

- Focus on 1-3 well-developed issues with strong legal foundations.
- Weak or waived arguments clutter your brief and dilute strong points.

Strategic Thinking: If the bankruptcy judge ruled soundly on a close issue, don't rehash it unless there's a genuine legal error. Pick your battles.

RESPECTING THE RECORD

The Record is Your Universe.

From the Bench:

“If the record isn’t there, your argument isn’t either.”

Critical Rules:

- Only facts and evidence in the record below can be considered.
- Never introduce new evidence or facts.
- Use precise, pinpoint citations to the record.
- Never misrepresent or overstate what’s in the record.
- Remember: bad appellate briefs often feel like trial briefs. That’s not helpful at this stage.

PRESERVATION OF ISSUES

Think About Appeal While Still in Bankruptcy Court.

The Waiver Problem:

- Issues not raised below are generally waived on appeal.
- Judges dislike reviewing arguments that weren't clearly presented to the bankruptcy court.

Best Practice: Develop your appeal strategy while litigating before the bankruptcy judge. Make clear objections and preserve the record.

BRIEF STRUCTURE AND WRITING

The Anatomy of a Strong Brief Standard Outline:

1. Table of Contents
2. Table of Authorities
2. Statement of Jurisdiction
4. Statement of Issues Presented
5. Standard of Review
6. Statement of the Case (Factual Background/Procedural History)

BRIEF STRUCTURE AND WRITING

The Anatomy of a Strong Brief Standard Outline, cont.:

7. Summary of Argument

8. Argument

- Issue 1 [with standard, legal framework, and application]
- Issue 2 [same structure]

9. Conclusion (relief sought)

BRIEF STRUCTURE AND WRITING

Organization and Clarity

Roadmap Your Reader:

- Use clear headings and subheadings
- Begin each section with a persuasive roadmap sentence
- End with a brief conclusion summarizing relief sought

Write Effectively:

- Shorter sentences
- Active voice
- Eliminate filler and redundancy
- Every sentence should advance your argument

AVOID COMMON PITFALLS

Don't Re-Argue the Case.

✗ Wrong Approach: “The bankruptcy court misunderstood the evidence.”

✓ Right Approach: “The bankruptcy court's ruling on [X] was clearly erroneous because it failed to consider [specific, material evidence in the record].”

Remember: Focus on legal error, not simply disagreeing with the bankruptcy court's conclusions. Don't treat the brief as a chance to retry the case.

STRATEGIC USE OF AUTHORITY

Case Law Integration Hierarchy Matters:

- Cite binding precedent first, especially from your circuit.
- Explain why cases apply—don't just quote or name-drop.
- Integrate authorities meaningfully into your analysis.

TONE AND PROFESSIONALISM

Respect the Bankruptcy Court.

- Never disparage the bankruptcy judge or opposing counsel.
- Focus on legal error, not personal criticism.
- Judicial error can be criticized—but do so respectfully and constructively.

PRESENTATION MATTERS

Polish Your Work

Citation Style:

- Use consistent Bluebook citation format.
- Check every cite for accuracy.

Proofreading:

- Judges and clerks notice sloppy writing.
- Typos, formatting errors, and inaccurate citations undermine credibility.
- Set the brief aside, then return with fresh eyes.
- Have a colleague review it.

Avoid:

- Overly emotional or hyperbolic language.
- Legalese and jargon without explanation.
- Verbose, repetitive prose.

ORAL ARGUMENT CONSIDERATIONS

Brief-Centric Review

Reality Check: Many district judges decide bankruptcy appeals entirely on the briefs.

If Argument Is Granted:

- Be prepared to discuss standards of review in depth
- Know your record citations cold
- Have key legal authorities at your fingertips
- Moot your argument with colleagues or even lay persons

Bottom Line: Make your brief count—it may be your only opportunity to persuade.

PRACTICAL IMPACT

Beyond Legal Abstractions

Judges consider more than just legal issues. We think about:

- How the decision affects the parties.
- Impact on the bankruptcy process generally.
- Real-world implications of our ruling.

Be honest and clear about these practical considerations in your brief.

KEY TAKEAWAYS

1. **Be strategic** about whether to appeal in the first place.
2. **Master timing** and jurisdictional requirements.
3. **Know your audience**—we're not bankruptcy specialists.
4. **Frame issues precisely** and identify standards of review.
5. **Respect the record**—it's all you have to work with.
6. **Write clearly and concisely**—quality over quantity.
7. **Show respect** for the bankruptcy court while identifying legal error.
8. **Polish your work**—presentation matters.
9. **Think ahead**—preserve issues at the bankruptcy court level.

Final Thought:

Your goal is to assist the judge in understanding—not overwhelm them.