

Appeals:
The Nuts & Bolts

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U.S. Bankruptcy Court (E.D. Mich.)
Detroit



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Appeal Process for the Eastern District of Michigan

Janet M. Steinle
U.S. Bankruptcy Court
Detroit, Michigan

1. File the “Notice of Appeal” in the bankruptcy case or adversary proceeding

Bankruptcy or Adversary Proceeding > Appeal > Case Number > Notice of Appeal

- a. Attach the notice in pdf format
- b. Relate notice to the “order” category
- c. Check box to related order that is being appealed
- d. Select “District Court” from drop down box
- e. Payment of \$255 for appeal

2. File the “Bankruptcy Matter Civil Cover Sheet”

Bankruptcy or Adversary Proceeding > Appeal > Case Number > Bankruptcy Matter Civil Cover Sheet

- a. New cover sheet located on Court’s internet site (www.mieb.uscourts.gov)
- b. Complete caption and list parties and counsel related to appeal
- c. Attach the cover sheet in pdf format
- d. Check box to refer to existing event
- e. Relate cover sheet to the “appeal” category
- f. Check box to the “Notice of Appeal”

3. File the “Election to Appeal,” if applicable

Bankruptcy or Adversary Proceeding > Appeal > Case Number > Election to Appeal

- a. Attach the election in pdf format
- b. Select appropriate party filing the election from the drop down box

- c. Select “District Court from drop down box
 - d. Check box to the related “Notice of Appeal”
4. File a “Certificate of Service”
- Bankruptcy or Adversary Proceeding > Other > Case Number > Certificate of Service**

- a. Attach the certificate of service in pdf format
 - b. Check box to refer to existing event
 - c. Relate certificate to the “appeal” category
 - d. Check box to the “Notice of Appeal” and “Cover Sheet”
5. File “Request for Transcript,” if a transcript is part of the record
- Bankruptcy or Adversary Proceeding > Other > Case Number > Transcript Request**

- a. Transcript Request form located on Court’s internet site
 - b. Complete one form for each hearing to be transcribed
6. Court will docket a “Notice of Requirement to File Designation”
- a. Appellant has 14 days from Notice of Appeal to file Designation and Statement of Issues
 - b. Appellee has 14 days from Appellant’s Designation to file Appellee’s Designation
 - c. List designated items by docket number
 - d. Parties do not have to submit copies of designated items to the Court
 - e. Notice will be sent to all interested parties listed on the Cover Sheet
7. Court will transmit appeal to District Court 30 days after Notice of Appeal Filed
8. District Court will open the appeal
- a. Assigns a civil case number
 - b. Assigns to a District Judge/Magistrate Judge
 - c. Dockets receipt of appeal from the Bankruptcy Court

- d. Creates a record on appeal and downloads copies of designated items for District Judge
9. Bankruptcy Court will docket District Court Receipt as “Execution of Bankruptcy Matter in U.S. District Court”
 - a. Attach “Notice of Receipt” in pdf format
 - b. Notation of civil case number in docket text
 - c. Notation of District Judge assigned to the appeal in docket text
10. Once appeal transmitted to District Court, any further pleadings are to be filed with the District Court pursuant to District Court L.R. 83.50(d)(2)
11. District Court will enter an order regarding appeal
12. Bankruptcy Court will docket District Court’s final order on the Bankruptcy Court’s docket

**United States District Court
Eastern District of Michigan**

**Bankruptcy Matter
Civil Case Cover Sheet**

District Court Label

In re:

Case No.:

Debtor.

_____ /

Adv. No.:

Appellant,

v.

Appellee.

Cause of Action/Nature of Suit: (This matter is referred to the district court for the following reasons)

- _____ [422] 28 U.S.C. 158 Bankruptcy Appeal
- _____ [422] 28 U.S.C. 158 Motion for Leave to Appeal
- _____ [423] 28 U.S.C. 157(d) Motion for Withdrawal of Reference
- _____ [423] 28 U.S.C. 157(c)(1) Proposed Findings of Fact and Conclusions of Law
- _____ [423] 28 U.S.C. 158(e)(a) Order of Contempt

Date: _____

Name: _____

Name and Address of Interested Parties

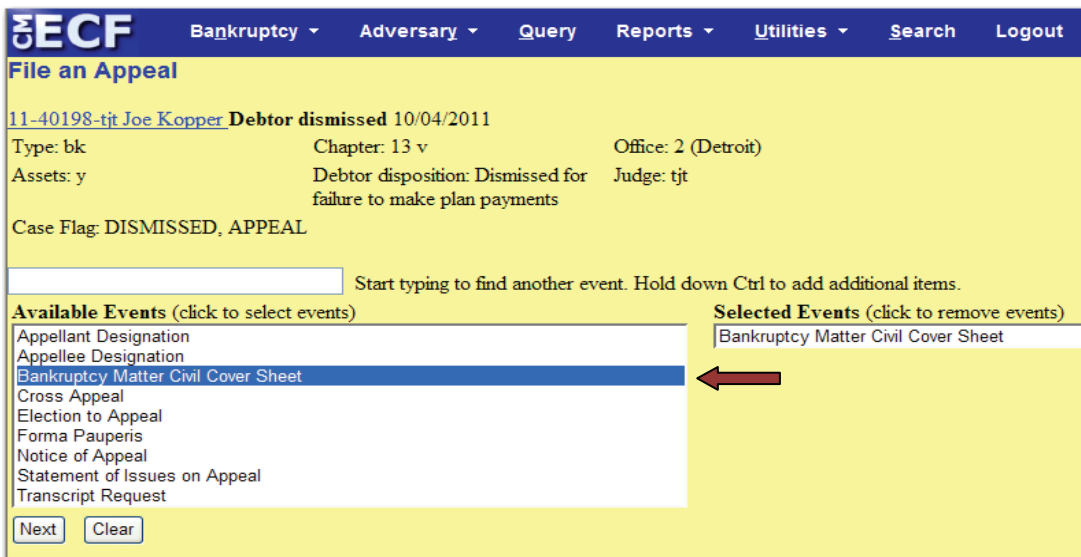
FILING THE BANKRUPTCY MATTER COVER SHEET



Select: Appeal



Click: [Next].



Select: Bankruptcy Matter Civil Cover Sheet.

Click: [Next].

ECF Bankruptcy ▾ Adversary ▾ Query Reports ▾ Utilities ▾ Search

File an Appeal:

[11-40198-tjt Joe Kopper](#) **Debtor dismissed** 10/04/2011

Type: bk	Chapter: 13 v	Office: 2 (Detroit)
Assets: y	Debtor disposition: Dismissed for failure to make plan payments	Judge: tjt

Case Flag: DISMISSED, APPEAL

Joint filing with other attorney(s).

Click: [Next].

ECF Bankruptcy ▾ Adversary ▾ Query Reports ▾ Utilities ▾

File an Appeal:

[11-40198-tjt Joe Kopper](#) **Debtor dismissed** 10/04/2011

Type: bk	Chapter: 13 v	Office: 2 (Detroit)
Assets: y	Debtor disposition: Dismissed for failure to make plan payments	Judge: tjt

Case Flag: DISMISSED, APPEAL

Select the Party:

Ford Motor Credit, [Creditor]

Kopper, Joe Jr. [Debtor]

Ronayne, CredEvent [U.S. Trustee]

Terry, Tammy L [Trustee]

[Add/Create New Party](#)

Select the party you represent

Click: [Next].

ECF Bankruptcy ▾ Adversary ▾ Query Reports ▾ Utilities ▾ Search Logout

File an Appeal:

11-40198-tjt Joe Kopper Debtor dismissed 10/04/2011

Type: bk	Chapter: 13 v	Office: 2 (Detroit)
Assets: y	Debtor disposition: Dismissed for failure to make plan payments	Judge: tjt

Case Flag: DISMISSED, APPEAL

Select the pdf document (for example: C:\199cv501-21.pdf).

Filename

S:\TRAINING\Sample PDFs for Atty Clas: ←

Attachments to Document: No Yes

Associate Civil Cover Sheet.
Click: [Next].

ECF Bankruptcy ▾ Adversary ▾ Query Reports ▾ Utilities ▾ Search Logout

File an Appeal:

11-40198-tjt Joe Kopper Debtor dismissed 10/04/2011

Type: bk	Chapter: 13 v	Office: 2 (Detroit)
Assets: y	Debtor disposition: Dismissed for failure to make plan payments	Judge: tjt

Case Flag: DISMISSED, APPEAL

Refer to existing event(s)?

Place checkmark in checkbox to refer to existing event.

MECF Bankruptcy ▾ Adversary ▾ Query Reports ▾ Utilities ▾

File an Appeal:

[11-40198-tjt Joe Kopper](#) **Debtor dismissed** 10/04/2011

Type: bk Chapter: 13 v Office: 2 (Detroit)
 Assets: y Debtor disposition: Dismissed for failure to make plan payments Judge: tjt

Case Flag: DISMISSED, APPEAL

Select the category to which your event relates.

answer
appeal
 audio
 auditor
 claims
 cmp
 court
 crditcrd
 misc
 motion

Filed to
 Documents to

Select: appeal.

Click: [Next].

MECF Bankruptcy ▾ Adversary ▾ Query Reports ▾ Utilities ▾ Search Log

File an Appeal:

[11-40198-tjt Joe Kopper](#) **Debtor dismissed** 10/04/2011

Type: bk Chapter: 13 v Office: 2 (Detroit)
 Assets: y Debtor disposition: Dismissed for failure to make plan payments Judge: tjt

Case Flag: DISMISSED, APPEAL

Select the appropriate event(s) to which your event relates:

10/04/2011 [24](#) Notice of Appeal to the District Court . Fee Amount \$255 Filed by Creditor Ford Motor Credit (RE: related document(s) [23](#) Order on Motion to Dismiss Case for Failure to Make Plan Payments, Order on Motion to Convert Case from Chapter 13 to Chapter 7). (attorney, twelve)

Place checkmark in box next to Notice of Appeal entry.

Click: [Next].

ECF Bankruptcy ▾ Adversary ▾ Query Reports ▾ Utilities ▾ Search Logout

File an Appeal:

[11-40198-tjt Joe Kopper Debtor dismissed 10/04/2011](#)

Type: bk	Chapter: 13 v	Office: 2 (Detroit)
Assets: y	Debtor disposition: Dismissed for failure to make plan payments	Judge: tjt

Case Flag: DISMISSED, APPEAL

Click: [Next].

ECF Bankruptcy ▾ Adversary ▾ Query Reports ▾ Utilities ▾ Search Logout

File an Appeal:

[11-40198-tjt Joe Kopper Debtor dismissed 10/04/2011](#)

Type: bk	Chapter: 13 v	Office: 2 (Detroit)
Assets: y	Debtor disposition: Dismissed for failure to make plan payments	Judge: tjt

Case Flag: DISMISSED, APPEAL

Docket Text: Final Text

Bankruptcy Matter Civil Cover Sheet Filed by Creditor Ford Motor Credit (RE: related document(s)[24] Notice of Appeal). (attorney, twelve)

Attention!! Submitting this screen commits this transaction. You will have no further opportunity to modify this submission if you continue.

Final docket text appears. If correct,
Click: [Next].

ECF		
Bankruptcy	Adversary	Query
Reports	Utilities	Search
Logout		

File an Appeal:

[11-40198-tjt Joe Kopper](#) **Debtor dismissed** 10/04/2011

Type: bk	Chapter: 13 v	Office: 2 (Detroit)
Assets: y	Debtor disposition: Dismissed for failure to make plan payments	Judge: tjt

Case Flag: DISMISSED, APPEAL

U.S. Bankruptcy Court
EASTERN DISTRICT OF MICHIGAN

Notice of Electronic Filing

The following transaction was received from twelve attorney entered on 10/4/2011 at 11:25 AM EDT and filed on 10/4/2011

Case Name: Joe Kopper
Case Number: [11-40198-tjt](#)
Document Number: [25](#)

Docket Text:
Bankruptcy Matter Civil Cover Sheet Filed by Creditor Ford Motor Credit (RE: related document(s)[24] Notice of Appeal). (attorney, twelve)

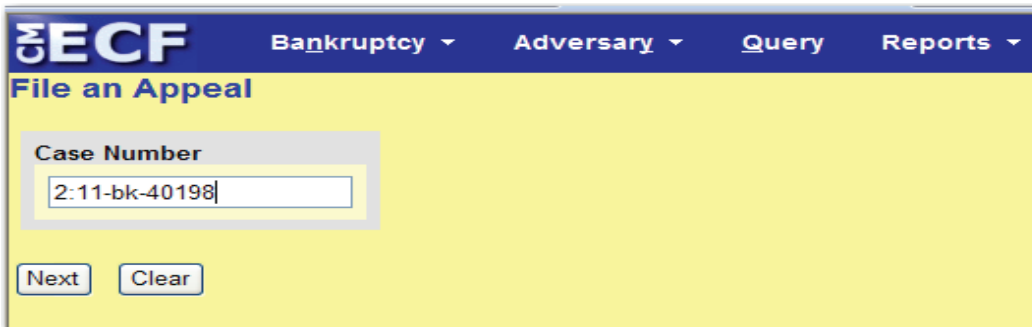
The following document(s) are associated with this transaction:

Notice of Electronic Filing appears. Cover Sheet now filed.

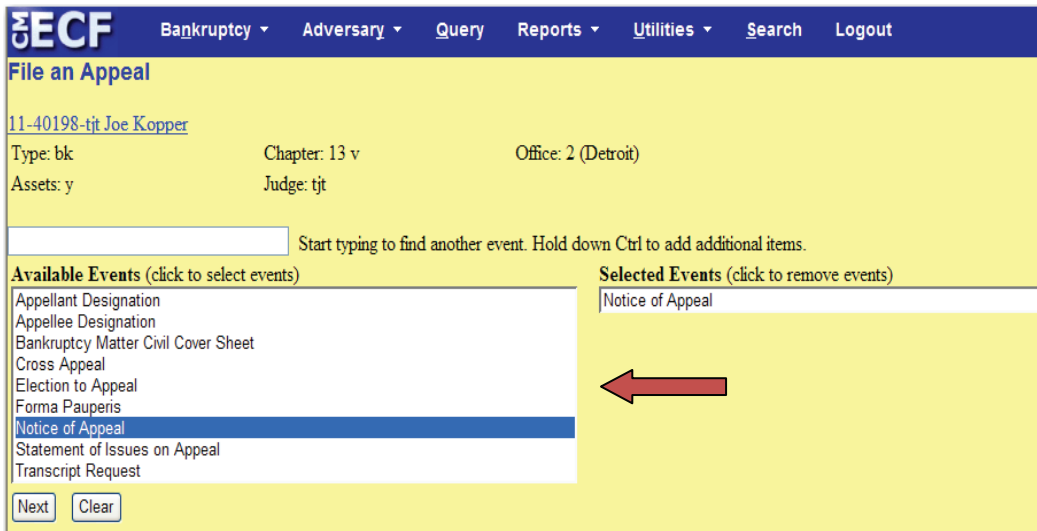
FILING THE NOTICE OF APPEAL



Select Appeal.



Enter in Case Number.
Click: [Next].



Select: Notice of Appeal.
Click: [Next].

ECF Bankruptcy ▾ Adversary ▾ Query Reports ▾ Utilities ▾

File an Appeal:

[11-40198-tjt Joe Kopper](#)

Type: bk Chapter: 13 v Office: 2 (Detroit)
Assets: y Judge: tjt

Joint filing with other attorney(s).

Click: [Next].

ECF Bankruptcy ▾ Adversary ▾ Query Reports ▾ Utilities ▾

File an Appeal:


[11-40198-tjt Joe Kopper](#)

Type: bk Chapter: 13 v Office: 2 (Detroit)
Assets: y Judge: tjt

Select the Party:

Kopper, Joe Jr. [Debtor]
Ronayne, CredEvent [U.S. Trustee]
Terry, Tammy L [Trustee]

[Add/Create New Party](#)



Select the party you represent.
Click: [Next].

ECF Bankruptcy ▾ Adversary ▾ Query Reports ▾ Utilities

File an Appeal:

11-40198-tjt Joe Kopper

Type: bk Chapter: 13 v Office: 2 (Detroit)
 Assets: y Judge: tj

Select the pdf document (for example: C:\199cv501-21.pdf).

Filename
 S:\TRAINING\Sample PDFs for Atty Class ←

Attachments to Document: No Yes

Browse and associate PDF document.
 Click: [Next].

ECF Bankruptcy ▾ Adversary ▾ Query Reports ▾ Utilities

File an Appeal:

11-40198-tjt Joe Kopper

Type: bk Chapter: 13 v Office: 2 (Detroit)
 Assets: y Judge: tj

Select the category to which your event relates.

cmp
 court
 crditcrd
 misc
 motion
 notice
 order
 plan
 sjta_event
 trustee

Filed to
 Documents to

Select the Order category.
 Click: [Next].

MECF Bankruptcy ▾ Adversary ▾ Query Reports ▾ Utilities ▾ Search Lo

File an Appeal:

[11-40198-tjt Joe Kopper Debtor dismissed 10/04/2011](#)

Type: bk Chapter: 13 v Office: 2 (Detroit)
 Assets: y Debtor disposition: Dismissed for failure to make plan payments Judge: tjt

Case Flag: DISMISSED

Select the appropriate event(s) to which your event relates:

10/04/2011 [23](#) Order Granting Motion to Dismiss Case for Failure to Make Plan Payments as to **Debtor, Joe Kopper** (Related Doc # [12](#)), Denying Motion to Convert Case from Chapter 13 to Chapter 7 (Related Doc # [12](#)). (beach, cindy)

Place checkmark inside checkbox to associate order being appealed.
 Click: [Next].

MECF Bankruptcy ▾ Adversary ▾ Query Reports ▾ Utilities ▾ Search

File an Appeal:

[11-40198-tjt Joe Kopper Debtor dismissed 10/04/2011](#)

Type: bk Chapter: 13 v Office: 2 (Detroit)
 Assets: y Debtor disposition: Dismissed for failure to make plan payments Judge: tjt

Case Flag: DISMISSED

Select Court:
 ▾

Select: District Court to populate box.
 Click: [Next].

ECF Bankruptcy ▾ Adversary ▾ Query Reports ▾ Utilities ▾ Search

File an Appeal:

[11-40198-tjt Joe Kopper](#) **Debtor dismissed** 10/04/2011

Type: bk	Chapter: 13 v	Office: 2 (Detroit)
Assets: y	Debtor disposition: Dismissed for failure to make plan payments	Judge: tjt

Case Flag: DISMISSED

IS APPELLANT:

1. US TRUSTEE
2. TRUSTEE
3. DEBTOR IN POSSESSION

Yes
 No

Select Yes or No radio button.
Click: [Next].

ECF Bankruptcy ▾ Adversary ▾ Query Reports ▾ Utilities ▾ Search

File an Appeal:

[11-40198-tjt Joe Kopper](#) **Debtor dismissed** 10/04/2011

Type: bk	Chapter: 13 v	Office: 2 (Detroit)
Assets: y	Debtor disposition: Dismissed for failure to make plan payments	Judge: tjt

Case Flag: DISMISSED

Fee: \$255

Click: [Next].

MECF Bankruptcy ▾ Adversary ▾ Query Reports ▾ Utilities ▾

File an Appeal:

[11-40198-tjt Joe Kopper](#) **Debtor dismissed 10/04/2011**

Type: bk	Chapter: 13 v	Office: 2 (Detroit)
Assets: y	Debtor disposition: Dismissed for failure to make plan payments	Judge: tjt

Case Flag: DISMISSED

Next, docket the Election to Appeal event

Click: [Next].

MECF Bankruptcy ▾ Adversary ▾ Query Reports ▾ Utilities ▾ Search Logout

File an Appeal:

[11-40198-tjt Joe Kopper](#) **Debtor dismissed 10/04/2011**

Type: bk	Chapter: 13 v	Office: 2 (Detroit)
Assets: y	Debtor disposition: Dismissed for failure to make plan payments	Judge: tjt

Case Flag: DISMISSED

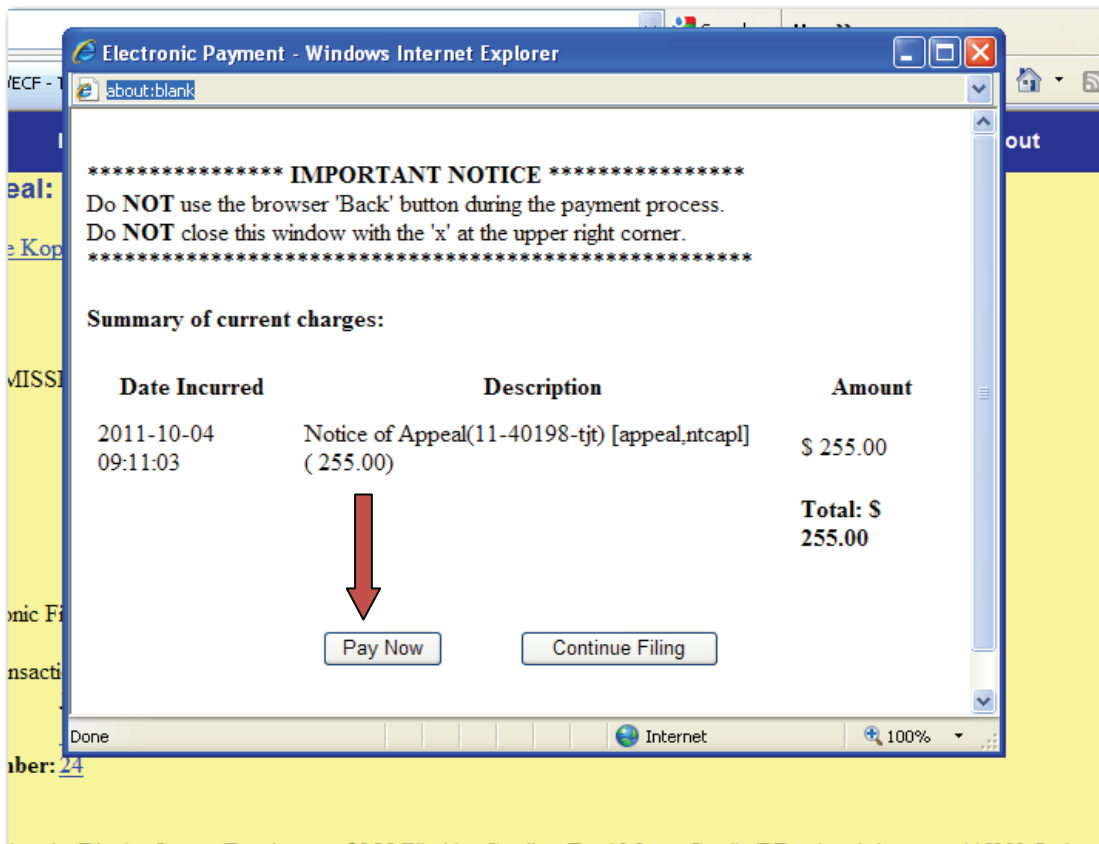
Docket Text: Modify as Appropriate.

Notice of Appeal to the District Court . Fee Amount \$255 Filed by Creditor Ford Motor Credit (RE: related document(s) [23] Order on Motion to Dismiss Case for Failure to Make Plan Payments, Order on Motion to Convert Case from Chapter 13 to Chapter 7). (attorney, twelve)

Modify docket text if needed.
Click: [Next].



Final Docket text.
 Click: [Next].



Notice of Electronic Filing appears along with payment window.
 Click: **Pay Now**.

ECF Bankruptcy ▾ Adversary ▾ Query Reports ▾ Utilities ▾ Search Logout

File an Appeal:

[11-40198-tjt Joe Kopper](#) Debtor dismissed 10/04/2011

Type: bk Chapter: 13 v Office: 2 (Detroit)
Assets: y Debtor disposition: Dismissed for Judge: tjt
failure to make plan payments

Case Flag: DISMISSED

U.S. Bankruptcy Court
EASTERN DISTRICT OF MICHIGAN

Notice of Electronic Filing

The following transaction was received from twelve attorney entered on 10/4/2011 at 9:11 AM EDT and filed on 10/4/2011

Case Name: Joe Kopper
Case Number: [11-40198-tjt](#)
Document Number: [24](#)

Docket Text:
Notice of Appeal to the District Court . Fee Amount \$255 Filed by Creditor Ford Motor Credit (RE: related document(s)[23] Order on Motion to Dismiss Case for Failure to Make Plan Payments, Order on Motion to Convert Case from Chapter 13 to Chapter 7). (attorney, twelve)

Notice of Electronic Filing.
Appeal Filed.

Appeals: The Nuts & Bolts

Charles J. Schneider
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Livonia, MI 48150
734 591-4890

charlesschneider@cschneiderlaw.com

Nine Key Decision-making Factors for an Appeal

Generally, there are nine factors that you must consider when deciding to appeal:

1. Are there non-bankruptcy or other bankruptcy alternatives?
2. Is the issue ripe for appeal?
3. Do you have good facts for the appeal?
4. Have all the issues been raised?
5. Will the client suffer adversely while the appeal is still pending?
6. Is there is a method to pay for the attorney without impacting the client?
7. Will the issues be rendered moot during the appeal?
8. Does your client have standing?
9. Do you have a final order?

1. Are there Non-Bankruptcy or Other Bankruptcy Alternatives?

Sometimes, you have to think outside of the box. Even if all of the following factors fall into place in relation to the appellate process, the question is whether a better outcome for the client might be derived from non-bankruptcy options. Alternatives such as an assignment for the benefit of creditors, negotiating a reduction of debt, developing a payment plan in state court or if it is a tax problem engaging in an offer and compromise may serve the client better than appealing. After all, you are appealing an unfavorable decision and your client has already lost. You should also consider if the case is a chapter 13 case would the client have a better outcome in view of the cost of an appeal by converting the case to a chapter 7 or vice versa?

2. Is the Issue Ripe for Appeal?

The court decides only existing substantial controversies and not hypothetical questions or

possibilities. Ripeness is the doctrine to prevent the courts from premature adjudication and entangling themselves in abstract disagreements. *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson County*, 274 F.3d 377, 399 (6th Cir. 2001). According to the Supreme Court, there are two components in the ripeness doctrine: "(1) the fitness of issues for judicial decision and (2) the hardship to the parties of withholding court consideration." *Nat'l Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803, 808, 123 S. Ct. 2026, 155 L.Ed.2d 1017 (2003). An example of a challenge to the ripeness of an issue on appeal occurred in *Cassim v. Educ. Credit Mgmt. (In re Cassim)*, 594 F.3d 432 (6th Cir. 2010). In that case the issue of constitutional ripeness was contended not to be present by a student loan creditor for a determination of non-dischargeability pursuant to 11 U.S.C. § 523(a)(8) for repayment of a student loan as an "undue hardship". It was contended that the debtor had yet to receive a discharge nor was the debtor imminently eligible to receive a discharge. It was argued that the determination would be hypothetical as the issue may be rendered moot by the failure of the debtor to complete the chapter 13 plan. In its decision the court distinguished between constitutional ripeness and prudential ripeness. It explained that, "[t]he ripeness doctrine not only depends on the finding of a case and controversy and hence jurisdiction under Article III, but it also requires that the court exercise its discretion to determine if judicial resolution would be desirable under all of the circumstances." *Brown v. Ferro Corp.*, 763 F.2d 798, 801 (6th Cir. 1985). Only when a claim is not ripe within the meaning of Article III does a court lack jurisdiction over the subject matter. The court indicated that the dispute involved a specifically-defined debt and a statutorily-based claim for relief that the Chapter 13 debtor was entitled to pursue.

3. Do you have good facts for the appeal?

Keep in mind the standard of review when you take the appeal. It is said that the bankruptcy court makes initial findings of fact and conclusions of law. The district court then reviews the bankruptcy court's findings of fact for clear error and the bankruptcy court's conclusions of law de novo. The Circuit Court of Appeals then reviews the bankruptcy court's findings of fact for clear error and the district court's conclusions of law de novo. Bankruptcy Rule 8013; *WesBanco Bank Barnesville v. Rafoth (In re Baker & Getty Fin. Servs.)*, 106 F.3d 1255 (6th Cir. Ohio 1997). An appeal based on an interpretation of facts requires the appellate court to find the judge's determination to be clearly erroneous. Deference must be given to his looking at the witness and judging their credibility. It is a higher standard to overcome than challenging merely an application of the law. In *Rembert v. AT&T Universal Card Servs. (In re Rembert)*, 141 F.3d 277 (6th Cir. Mich. 1998), is an example of a successful appeal based on facts, but it also was based on the legal standard used by the court in its interpretation of the facts. The case involved gambling, and the subjective belief of the debtor's intent to pay back debt by means of gambling. The debtor admitted, in hindsight, that her belief that she would win enough to repay the debts was objectively unreasonable. However, this later admission was not dispositive of her intent to repay the debt. The appellate court focused on the totality of the circumstances and other facts in the debtor's resolve to right her financial situation. It was a fact-driven case that successfully challenged the bankruptcy court's use of an objective standard which had stated that it was unreasonable for the debtor to believe she had the ability to repay her debt by gambling.

4. Have all the issues been raised?

Generally, the appellant cannot raise an issue at the appellate level unless it was first raised at the bankruptcy court level. *R.D.F. Devs., Inc. v. Sysco Corp. (In re R.D.F. Devs., Inc.)*, 239 B.R.

336, 340-341 (B.A.P. 6th Cir. Ohio 1999) citing *Koenig Sporting Goods, Inc. v. Morse Road Co. (In re Koenig Sporting Goods, Inc.)*, 229 B.R. 388, 389, n. 1 (B.A.P. 6th Cir. 1999). However, it is within the discretion of the appellate court to hear the issue only in exceptional cases or where application of the rule would result in a miscarriage of justice. (Citing *United States v. Reed*, 141 F.3d 644, 651-52 (6th Cir. 1998)). The exercise of such discretion is guided by factors such as: “(1) whether the issue newly raised on appeal is a question of law, or whether it requires or necessitates a determination of facts; 2) whether the proper resolution of the new issue is clear and beyond doubt; 3) whether failure to take up the issue for the first time on appeal will result in a miscarriage of justice or a denial of substantial justice; and 4) the parties' right under our judicial system to have the issues in their suit considered by both a [trial] judge and an appellate court.” *Friendly Farms v. Reliance Ins. Co.*, 79 F.3d 541, 545 (6th Cir. 1996); *R.D.F. Devs., Inc v. Sysco Corp.* at 341. Raising all the issues is not the same as whether the issue is ripe for appeal. The latter assumes that the issue has been raised but it was not fully decided by the court below. If you have not raised all of the issues, you might want to do so in a motion for reconsideration. Even if the motion for reconsideration is denied, you would have nevertheless raised the issue and supplemented the record with an offer of proof introducing possibly neglected facts. Unless the court orders a response, the opposing party does not have to reply, but may reply, to a motion for reconsideration. Typically, the motion is considered by the judge independently. The judge may order a hearing to entertain more oral argument. A successful motion for reconsideration must show that there was a palpable defect in the original determination by the court that misled the court and the parties, and that correcting the defect will result in a different disposition of the case. *Sundberg v. Keller Ladder*, 189 F. Supp. 2d 671, 674 (E.D. Mich. 2002) A motion which just rehashes the same issues or facts will be denied.

A *sua sponte* ruling by the court increases the likelihood that you may be granted a hearing on the motion for reconsideration. In this scenario, the judge raises the issue for the first time. You are unprepared as the opposing party did not raise the issue by their pleading. This is what occurred in *Glance v. Carroll (In re Glance)*, 487 F.3d 317 (6th Cir. Mich. 2007). The court raised the issue of the debtor exceeding the Chapter 13 jurisdictional limit by including a secured claim on the debtor's joint real estate for which the debtor had no personal liability. The debtor had not been given an opportunity to argue and write on the issue. The judge granted the motion for reconsideration, heard the new arguments, and then ruled against the client. However, the motion supplemented the record with further facts and provided a prepared cogent argument. Most judges realize you may have been blindsided by a lack of notice and grant a motion for reconsideration.

5. *Will the Client suffer adversely while the Appeal is still pending?*

When it was decided that *Glance* should be appealed, the first thing that had to be obtained was a reinstatement of the automatic stay pending the appeal as the judge had dismissed the case. The client was still being pursued by the IRS for a trust fund liability on Federal withholding taxes. It is within the court's discretion to grant a stay pending the appeal. The stay motion is filed in the bankruptcy court. The court considers four factors in exercising its discretion" (1) the likelihood that the party seeking the stay will prevail on the merits on appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the harm to others that will occur if the court grants the stay; and (4) the public interest in granting the stay." *In re Level Propane Gases, Inc.*, 304 B.R. 775, 777 (Bankr. N.D. Ohio 2004)(citing *Am. Imaging Servs., Inc. v. Eagle-Picher Indus., Inc. (In re Eagle-Picher Indus., Inc.)*, 963 F.2d 855, 858 (6th Cir. 1992). It is uncertain how a bankruptcy judge decides that there is any likelihood of succeeding

on appeal, after all, the judge has just ruled against the client. With the filing of the stay motion, one of the inventive things that we did was to say: “Why doesn’t the debtor just perform the Chapter 13 plan as proposed and the judge can condition the stay pending the appeal upon that performance as a performance bond?” Part of the consideration of the judge was that the debtor had successfully also confirmed a solely owned business Chapter 11 plan that was jointly responsible for the IRS debt and that the obligation to the IRS was being paid in full under the confirmed Chapter 11 plan. We established that harm might come to the debtor pending the appeal from the imminent enforcement of the IRS debt, no harm would come to unsecured creditors as the debtor was performing the chapter 13 plan as a means of paying his claims, and that there was a public interest in a higher court hearing the novel issue on appeal. The court granted the stay and the debtor received the needed protection from the IRS and other creditors during the pending appeal.

6. *Is there a method to pay for the attorney without impacting the client?*

The attorney fees in the *Baud v. Carroll*, 634 F.3d 327 (6th Cir. Mich. 2011) appeal were paid from the chapter 13 plan by reducing the dividend to unsecured creditors. However, you have to be careful when you are modifying the plan to reduce the dividend to unsecured creditors to fund an appeal. The trustee might challenge your fees as having little value to the debtor and certainly none to the estate especially if it fails. They may claim the appeal to be frivolous. Your fees are subject to the bankruptcy court’s review. Judges and Trustees are sensitive about reducing dividends to unsecured creditors. Everyone can agree that the importance of such cases such as *Baud* justified compensation. Although the attorney fees were paid for the appeal to the District Court, additional fees were sacrificed as pro bono representation for the appeal to the Sixth Circuit.

The attorney fees in the *Glance* appeal were paid by the performance bond which was performance of the original proposed plan without disbursement to creditors other than administrative claim created by attorney fees on appeal. The performance bond thus killed two birds with one stone. It enabled the debtor to fund the attorney fees for the appeal all the way to the Court of Appeals and provide a basis for reimposing the automatic stay. The impact of the attorney fees on the client was reduced.

7. *Will the issues be rendered moot during the appeal?*

It is important in a chapter 13 case that a stay pending the appeal is obtained if one of the components, for example, involves the sale of any personal or real property to fund the plan. It has been said that a district court may dismiss as moot an appeal from a confirmation order, when the underlying plan has been so substantially consummated that effective relief is no longer available to the appellant. See, e.g., *In re Roberts Farms, Inc.*, 652 F.2d 793 (9th Cir. 1981); *Miami Center Ltd. Partnership v. Bank of New York*, 838 F.2d 1547, 1557 (11th Cir. 1988). If asked to dismiss an appeal for mootness a district court must consider the following factors: “(1) whether a stay has been obtained; (2) whether the plan has been substantially consummated; and (3) most importantly, whether the relief requested would affect the rights of parties not before the court or the success of the plan.” *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re Am. Homepatient, Inc.)*, 420 F.3d 559, 563-64 (6th Cir. 2005) If the sale has occurred there may be substantial compliance with the plan where it would be inequitable to unwind the occurrence. It may affect the rights of third parties not before the court. The appellant would be the cause of the inequity by failing to obtain the stay.

8. *Does your client have standing?*

Standing in an Article III case (a district court case) is distinguished from standing in a

bankruptcy case. In an Article III case standing requires (1) injury in fact, which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) a causal connection between the injury and the conduct; and (3) redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992). Standing in a bankruptcy is a bit more narrowed as it requires that an appellant must have been "directly and adversely affected pecuniarily by the order." *Fidelity Bank, Nat'l Ass'n v. M.M. Group, Inc.*, 77 F.3d 880, 882 (6th Cir. 1996). "...this principle, also known as the 'person aggrieved' doctrine, limits standing to persons with a financial stake in the bankruptcy court's order." It is said that a party may only appeal a bankruptcy court order when it diminishes their property, increases their burdens or impairs their rights. This was critical in *Baud v. Carroll*, 634 F.3d 327 (6th Cir. Mich. 2011) because the debtors needed the authority of the *Zahn v. Fink (In re Zahn)*, 526 F.3d 1140 (8th Cir. 2008) case. It determined that the debtors were aggrieved as a result of the denial of the original proposed three year plan.

9. Do you have a final order?

You must consider whether you have received a final order. If you have, then you can take an appeal as a matter of right. 28 U.S.C. § 158(a)(1). A final judgment is one which disposes of the whole subject, gives all the relief that was contemplated, provides with reasonable completeness, for giving effect to the judgment and leaves nothing to be done in the cause save to superintend, ministerially, the execution of the decree. *Louisa v. Levi*, 140 F.2d 512, 514 (6th Cir. Ky. 1944) citing *Grand Trunk Western R. Co. et al. v. McHie*, 6 Cir., 100 F.2d 86; *Turnbull v. United States of America*, 6 Cir. 139 F.2d 126; *Hunter v. Federal Life Insurance Company*, 8 Cir., 103 F.2d 192; *Fields v. Mutual Ben. Life Ins. Co.*, 4 Cir., 93 F.2d 559 Confirmation of a plan of reorganization constitutes a final judgment in bankruptcy proceedings. *Sanders Confectionery*

Prods. v. Heller Fin., Inc., 973 F.2d 474, 480 (6th Cir. Mich. 1992). The confirmation of a chapter 13 plan is a final order. If you do not have a final order, you must move the District Court for leave to file an interlocutory appeal. A district court may hear an interlocutory appeal if “(1) the order involves a controlling question of law; (2) a substantial ground for difference of opinion exists regarding the correctness of the decision; and (3) an immediate appeal may materially advance the ultimate termination of the litigation.” *In re A.P. Liquidating Co.*, 350 B.R. 752, 755 (E.D. Mich. 2006) (Hood, J.) (quoting *West Tenn. Chapter of Associated Builders & Contractors, Inc. v. City of Memphis*, 293 F.3d 345, 350 (6th Cir.2002)). Though leave has not been granted by the district court, the notice of appeal is filed simultaneously with the bankruptcy court. Generally, the grant of interim attorney fees in a bankruptcy case is not a final order. It is important that consumer bankruptcy practitioners know that the grant of attorney fees in association with the entry of an order confirming a chapter 13 plan is a final order. *Boddy v. U.S. Bankruptcy Court, Western District of Ky. (In re Boddy)*, 950 F.2d 334 (6th Cir. 1991)

