AMERICAN BANKRUPTCY INSTITUTE

2025 Midwestern Bankruptcy Institute

Judicial Round-and-Round

Hon. Robert D. Berger
U.S. Bankruptcy Court (D. Kan.) | Kansas City

Hon. Bonnie L. Clair
U.S. Bankruptcy Court (E.D. Mo.) | Saint Louis

Hon. Thad J. Collins
U.S. Bankruptcy Court (N.D. Iowa) | Cedar Rapids

Hon. Brian T. Fenimore
U.S. Bankruptcy Court (W.D. Mo.) | Kansas City

Hon. Shon K. Hastings
U.S. Bankruptcy Court (D. N.D.) | Fargo

Hon. Mitchell L. Herren
U.S. Bankruptcy Court (D. Kan.) | Wichita

Hon. Cynthia A. Norton
U.S. Bankruptcy Court (W.D. Mo.) | Kansas City

Hon. Dale L. Somers
U.S. Bankruptcy Court (D. Kan.) | Topeka

Hon. Kathy A. Surratt-States
U.S. Bankruptcy Court (E.D. Mo.) | Saint Louis

Hon. Brian C. Walsh
U.S. Bankruptcy Court (E.D. Mo.) | Saint Louis

Recent Chapter 11 Cases of Interest

Hon. Elizabeth L. Gunn[1]

Merchant Cash Advances

Memorandum Opinion in Support of Order Denying Kapitus's Motion for Summary Judgment, ***Kapitus Servicing, Inc. v. Etunnuh (In re Etunnuh)***, No. 23-181 (Sept. 26, 2025 Bankr. D. Md.), Dkt. No. 42.

Kapitus, Inc. (the "Plaintiff") signed a merchant cash advance agreement ("MCA") with a pharmacy operating under the trade name CareMax that was personally guaranteed by CareMax's owners, Uche Moses and Chikamnele Iheoma Etunnuh (the "Defendants"). Three weeks after the MCA was entered into, the Defendants defaulted, and the Plaintiff ultimately received a state court judgement in its favor. Soon thereafter, the Defendants filed for bankruptcy and the Plaintiff initiated an adversary proceeding claiming the debt owed to it was exempt from discharge under § 523(a)(2)(A) (false representations), § 523(a)(2)(B) (debt obtained by materially false statement with respect to the debtor's financial condition), and § 523(a)(4) (embezzlement). Analyzing each in turn, the United States Bankruptcy Court for the District of Maryland found that summary judgment against the Defendants was not appropriate, despite the Defendants never filing a response to the motion for summary judgement. The Plaintiffs first argued that the Defendants knew they would soon be insolvent when the MCA was signed. The court quickly noted that evidence of performance can rebut fraudulent intent, and CareMax had paid, or attempted to pay, the full amount due for a series of payments. Further, the court emphasized the unique nature of entities that enter into MCA agreements with businesses: they are "'truncated' from that of a standard financing institution." The Plaintiff did nothing to verify the assertions and representation of the Defendants beyond merely reviewing the documents submitted. The court imparted some ownness on the Plaintiff, commenting "A reasonable mind could conclude from these facts that Kapitus knew or should have known that CareMax was experiencing financial difficulties. Since MCA lenders rely on borrower representations of their financial conditions, those same lenders cannot then turnaround and state they were misled, especially because it was clear from the transaction history and actions of the parties that neither CareMax nor the Defendants intended to deceive the Plaintiff." The court also questioned "whether a merchant cash lender like Kapitus *can ever* reasonably rely on a borrower's or guarantor's representations alone given the nature of such loans or whether the 'truncated' nature typical for alternative financing industry will typically preclude such a determination." For similar reasons, the court quickly dismissed the embezzlement claim, finding that the Defendants placing their funds into an account that Plaintiffs could not access was insufficient to prove embezzlement. Ultimately, the Bankruptcy Court for the District

[1] Judge Gunn thanks her 2025-26 term law clerk Olivia Woodmansee (American University School of Law 2025) for her invaluable assistance in the preparation of these materials.

of Maryland was able to see through the dubious practices exercised by some MCA lenders and called into question the factual reality of a situation involving MCA debt.

AI Hallucinations

Order Regarding Sanctions, ***In re Whitehall Pharmacy LLC***, No. 25-12406 (Sept. 3, 2025, Bankr. E.D. Ark.), Dkt. No. 101.

The U.S. Bankruptcy Court for the Eastern District of Arkansas found itself looking at a phantom when it went to research a case referenced in a first day motion. Whitehall Pharmacy (the "Debtor") filed a bankruptcy petition and a motion to pay pre-petition claims to various creditors and vendors. Within that motion was paragraph 15, which read "Courts in this District and others have routinely authorized the payment of critical vendor claims under similar circumstances. *See*, *e.g.*, *In re Berry Good, LLC*, No. 20-12345 (Bankr. E.D. Ark. May 2020) (authorizing payment of perishable produce suppliers critical to debtor's restaurant operations)." The premise this case stood for was incredibly persuasive to the Debtor's overall argument, as there was sparse caselaw in the Eastern District of Arkansas on this very issue. There was just one problem with the case: it didn't exist. Once brought before the court to explain the genesis of the case, counsel quickly admitted to the use of generative artificial intelligence (AI). The party plead negligence and "systemic lapses in lieu of an intent to mislead the court or gain and adversarial advantage." The court then imposed safeguards that included eliminating counsel's ability to use AI in pleadings and only allowed it in administrative tasks with attorney oversight, mandatory CLE, and verification of each cite in either Lexis or Westlaw prior to filing. The court emphasized: "Simply, you cannot make stuff up to convince a court to do something." The opinion itself comments on the evolving nature of legal research and emphasizes that while AI is a tool, it is still in its infancy and must be checked by an attorney. Sanctions were imposed because the use of AI violates traditional norms of advocacy, as articulated by Rule 9011 and Arkansas Rule of Professional Conduct, adopted by Local Bankruptcy Rule 2090-2.

Subchapter V and Applicability of § 523(a)

In re 2 Monkey Trading LLC, 142 F.4th 1323 (11th Cir. 2025)

This case opined the question of whether 11 U.S.C. § 1192 applies to both individual and corporate debtors or just individual debtors. Section 1192 allows debtors to discharge their debts "except any debt . . . of the kind specified in section 523(a)." In *2 Monkey Trading*, the debtors, 2 Monkey Trading LLC and Lucky Shot USA LLC, argued that the § 523(a) limitation applied only to individual debtors, and corporate debtors are free to discharge the type of debt described therein. The argument is based in the preamble language of § 523(a), which explicitly states that "individual debtor[s]" are not discharged from particular debts. The Eleventh Circuit first turned

to statutory interpretation and stated that throughout the Bankruptcy Code, Congress intentionally distinguished consumer and corporate debts at points when it felt a distinction was necessary. Further, the court found that a plain language reading of the statute also did not support a finding that the statute excluded corporate debtors and that the debtor's argument that "specified in § 523(a)" intentionally included the preamble because that conflicted with the plain meaning and, if read that way, would "erase the corporate debtor discharge exceptions in § 1141(d)(6)." In aligning with the Fourth and Fifth Circuits, the Eleventh Circuit found that subchapter V debtors, either individual or corporate, cannot discharge debts listed in § 523(a). In perhaps one of the best dissents ever written, Judge Luck responded by providing a string cite of ten (10) cases, including numerous cases in the circuit, which had come to the opposite conclusion, followed by "Because these courts have the best reading of the bankruptcy code, I respectfully dissent."

VESTING UPON CONFIRMATION

General Rule: Under §§ 1141(b), 1227(b), and 1327(b), confirmation of a chapter 11, 12, or 13 plan vests all property of the estate in the debtor unless the plan or confirmation order provides otherwise.

How does this vesting impact the post-confirmation jurisdiction of the bankrutcy court?

Mountain Meadow Mushroom Farms, Inc. v. Smallhold, Inc. (In re Smallhold, Inc.), Adv. No. 2025 WL 2395029 (Bankr. D. Del. Aug. 18, 2025) (Goldblatt, J.) (stating that bankruptcy court's jurisdiction "narrows sharply" after chapter 11 confirmation and analyzing scope of post-confirmation "related to" jurisdiction in subchapter V case).

What about the automatic stay?

Upon vesting, the stay protecting property of the estate no longer applies. But the stay protecting property of the debtor might still provide protection until discharge is granted. 11 U.S.C. § 362(c).

What about post-confirmation conversion from chapter 11 to chapter 7?

Compare In re L & T Machining, Inc., 2013 WL 3368984 (Bankr. D. Kan. July 3, 2013) (Nugent, C.J.) (concluding automatic vesting under § 1141(b) prevents the assets from "revesting" in the converted chapter 7 estate), *and In re Freeman*, 527 B.R. 780 (Bankr. N.D. Ga. 2015) (same), *with Baroni v. Seror (In re Baroni)*, 36 F.4th 958 (9th Cir. 2022) (stating courts should take "holistic approach" to whether default vesting rules apply).

What about post-confirmation conversion from chapter 13 to chapter 7?

§ 348(f) applies, but some courts find it confusing or ambiguous. Recent cases include *Goetz v. Weber (In re Goetz)*, 95 F.4th 584 (8th Cir. 2024), *Castleman v. Burman (In re Castleman),* 75 F.4th 1052 (9th Cir. 2023), and *Rodriguez v. Barrera (In re Barrera)*, 22 F.4th 1217 (10th Cir. 2022).

FIVE APPROACHES TO VESTING (CHAPTER 13)

Reconcile the concept of vesting upon confirmation (§ 1327) with the expanding nature of the chapter 13 estate (§§ 541 and 1306).

Estate Termination Approach – On one end of the spectrum we have the estate termination approach where "Vesting is King." All property of the estate vests in the debtor upon confirmation and there is no longer any bankruptcy estate, unless the plan or confirmation order says otherwise.

Estate Replenishment Approach – In the middle we have the estate replenishment approach. Under this approach, all preconfirmation property vests in the debtor upon confirmation, and any property that the debtor acquires after confirmation becomes new property of the estate. Think about a bucket full of assets at the beginning of the case. When we confirm the plan, we dump that bucket out into the debtor's sandbox. And we start filling the bucket up with newly-acquired assets—post-confirmation income, a vehicle acquired post-confirmation, inheritances, and the like.

Conditional Vesting Approach – Sort of in the middle, but really close to the estate preservation approach, is the conditional vesting approach, which says all the property is property of the estate, but the debtor has "an immediate and fixed right to the future enjoyment of [that property]." But the debtor's right to that future enjoyment is not final until the debtor completes the plan and earns a discharge.

Estate Transformation Approach – Another approach somewhere between the two ends of the spectrum is the estate transformation approach, which enjoyed some popularity in the 1980s as a compromise between the extremes, i.e., when everyone was first trying to figure all this out. It's difficult to describe. But think of it as a malleable concept where property of the estate is basically any asset that is necessary to fulfill the plan. Usually, that will include the debtor's net income. It might also include a car if you consider the car necessary for the debtor to get to work to earn the income that funds the plan. Let your imagination wander here!

Estate Preservation Approach – On the other end of the spectrum, we have the estate preservation approach. The bankruptcy estate remains intact until the end of the case and includes all property the debtor owned on the petition date, plus all income and property the debtor earns or acquires while the case is pending. The concept of vesting merely tells us who gets to use and enjoy property of the estate–like drive it, live and sleep in it, etc.

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See In re Marsh, 647 B.R. 725 (Bankr. W.D. Mo. 2023) (Fenimore, C.J.) (adopting estate replenishment approach).

Because § 1186 expands the scope of the bankruptcy estate in a non-consensually confirmed subchapter V case, just like § 1306 does in chapter 13, there is support for using the same analysis in the non-consensual subchapter V cases. *Mountain Meadow Mushroom Farms, Inc. v. Smallhold, Inc. (In re Smallhold, Inc.)*, 2025 WL 2395029, at *8 (Bankr. D. Del. Aug 18, 2025) (Goldblatt, J.).

Ask Me Anything: Applying to Become a Bankruptcy Judge

Hon. Bonnie L. Clair
Chief U.S. Bankruptcy Judge
Eastern District of Missouri

This roundtable focuses on applying to become a bankruptcy judge. Participants are welcome to ask any questions they want, but these are some areas for inquiry:

Before Deciding Whether to Apply

- Is having the goal of becoming a bankruptcy judge — or any type of judge —realistic career planning?
- Why consider applying to become a bankruptcy judge?
- What background and credentials must and should a judicial applicant have?
- What background and credentials must and should an applicant for a bankruptcy judgeship have?
- When are you "ready" to apply for a bankruptcy judge position?
- Is there such a thing as a "perfect" applicant for a bankruptcy judgeship?
- How will serving as a bankruptcy judge affect my life outside of the courthouse?

The Application Process

- What does the bankruptcy judgeship application process involve in the Eighth and Tenth Circuits?
- How can I be well-prepared to go through the process someday?
- How should I approach the written application?
- What should I plan to include with my application?
- What should I include with any cover letter?
- How should I prepare for interviews during the process?
- Should I tell my current employer that I am going to apply or that I have applied? If so, when? And is there any way to keep them from knowing about it?
- What things were most surprising to you about the application process?
- What does the background investigation involve?

If You Are Selected to Serve

- What are the overall pros and cons of serving in the judiciary?
- What are the most substantial differences between private or in-house practice and serving in the judiciary?
- What are the most substantial differences between serving in a legal capacity in the executive and/or legislative branches and serving in the judiciary?
- What does the job of "bankruptcy judge" really involve?
- How do you physically and mentally transition to the bench from private or government practice? What resources exist to help with that transition?
- How do you spend your time on a daily basis?
- Has being a judge affected how you live your life outside of the courthouse?
- What is something that surprised you about serving as a bankruptcy judge?

ABI/UMKC Midwest 2025 Conference
Judicial Round and Round
Friday, October 17, 2025

Adversary Proceedings Seeking 11 U.S.C. § 523 Exceptions from Discharge

A. Twenty-one exceptions from discharge; some are not applicable in Chapter 13.
B. Either the debtor or a creditor may file an adversary proceeding under 11 U.S.C. § 523.
C. Deadlines:
   1. A complaint seeking an exception to discharge may be filed at any time, except those described in § 523(c). FRBP 4007(b).
   2. Chapter 7 , 11 , 12 , or 13 — Time to File a Complaint Under § 523(c). Except as (d) provides, a complaint to determine whether a debt is dischargeable under § 523(c) must be filed within 60 days after the first date set for the § 341(a) meeting of creditors. On motion filed before the time expires, the court may, after notice and a hearing and for cause, extend the time to file. FRBP 4007(c).
   3. Chapter 13 — Time to File a Complaint Under § 523(a)(6). When a debtor files a motion for a discharge under § 1328(b), the court must set the time to file a complaint under § 523(a)(6) to determine whether a debt is dischargeable. On motion filed before the time expires, the court may, after notice and a hearing and for cause, extend the time to file. FRBP 4007(c).
D. State courts have concurrent jurisdiction with the bankruptcy court to determine dischargeability of a debt under Chapters 7, 11 and 12 involving § 523(a) discharge exceptions other than those arising under § 523(a)(2), (4) and (6).
E. Burden of proving an exception to discharge under § 523(a) is on the creditor seeking the exception to discharge, except under § 523(a)(8). The exception from discharge under section 523(a)(8) is self-executing. The debtor bears the burden of "going forward with the evidence, and the burden of persuasion as to the outcome." Hurst v. S. Ark. Univ. (In re Hurst), 553 B.R. 133, 140 (B.A.P. 8th Cir. 2016).
F. To prevail in a claim under § 523(a), the party carrying the burden must prove each element by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279 (1991).
G. In cases in which the underlying debt is disputed, courts require a two-part analysis under § 523(a): first, the courts determine the validity of the debt under applicable law; and second, the courts determine whether the debt should be excepted from discharge under section 523. Messiahic, Inc. v. Glasser (In re Glasser), 664 B.R. 265, 298 (Bankr. D.N.D. 2024).
H. Courts narrowly construe exceptions to discharge to effectuate the "fresh start" of the Bankruptcy Code. Cmty. Fin. Grp., Inc. v. Fields (In re Fields), 510 B.R. 227, 233 (B.A.P. 8th Cir. 2014) (citation omitted).

Proving and Defending Stay Relief Motions

A. Follow Local Rules regarding service and evidence.
B. Attach *and offer* evidence (affidavits, security agreements, titles, deeds)
   1. Property of the bankruptcy estate
   2. Creditor's collateral, and
   3. Value and equity/lack of equity in collateral.
C. Two independent and alternative standards for granting relief from the automatic stay: (1) for cause, including the lack of adequate protection of an interest in property of such party in interest; (2) with respect to a stay of an act against property under subsection (a) of this section, if—(A) The debtor does not have equity in the property; and (B) Such property is not necessary to an effective reorganization. 11 U.S.C. § 362(d).
D. Cause means "'any reason whereby a creditor is receiving less than his bargain from a debtor and is without a remedy because of the bankruptcy proceeding.'" Martens v. Countrywide Home Loans (In re Martens), 331 B.R. 395, 398 (B.A.P. 8th Cir. 2005) (citation omitted).
E. Burden of Proof: The moving party has the burden of proof on the issue of the debtor's equity in any property involved, and the party opposing the motion has the burden of proof on all other issues. 11 U.S.C. § 362(g).

Artificial Intelligence: Ethical Considerations, Latest Trends & Best Practices

By Hon. Cynthia A. Norton, U.S. Bankruptcy Judge, Western District of Missouri
Midwestern Bankruptcy Institute October 2025

- ***What Rules of Professional Conduct are implicated by a lawyer's use of GenAI?*** A partial list:
  - Rules 1.1 (Competence)
  - Rule 1.3 (Diligence)
  - Rule 1.4 (Communication)
  - Rule 1.5 (Fees)
  - Rule 1.6 (Confidentiality)
  - Rule 3.1 (Meritorious Claims & Contentions)
  - Rule 3.3(a)(1) (Candor Towards the Tribunal)
  - Rule 5.1(a) (Responsibilities of Partners, Managers & Supervisory Lawyers)
  - Rule 5.3(a) (Responsibilities Regarding Nonlawyer Assistants)
  - Rule 5.5 (Unauthorized Practice of Law)
  - Rule 8.4 (Misconduct)
- ***Summary of Some (Current) Best Practices***: https://www.pabar.org/site/For-the-Public/Ethics-Opinions-Public
  - Being Truthful & Accurate
  - Verifying All Citations & The Accuracy of Cited Materials
  - Assuring Competence
  - Maintaining Confidentiality
  - Identifying Conflicts of Interest
  - Communicating with Clients:
  - Assuring Information is Unbiased & Accurate
  - Ensuring That AI Is Properly Used
  - Adhering to Ethical Standards
  - Exercising Professional Judgment
  - Utilizing Proper Billing Practices
  - Maintaining Transparency
- ***Discussion Questions:***
  - Are you using GenAI currently? Does it save you time? Are the results trustworthy?
  - Do you have an ethical duty to learn about GenAI?
  - If you are going to use GenAI products in preparing work product, how much do you disclose to clients?
  - How should you bill for such time?
  - How do you establish best practices for supervising junior attorneys and staff?
  - What are your concerns about lawyers' use of GenAI?
  - Concerns about pro se parties?
- ***Sources:***
  - ABA Formal Opinion 512
  - New York State Bar Task Force Report April 2024
    - A Compendium of Legal Ethics Opinions on Gen AI (As Compiled by – You Guessed It – Gen AI), https://www.lawnext.com/2025/02/a-compendium-of-legal-ethics-opinions-on-gen-ai-as-compiled-by-you-guessed-it-gen-ai.html?utm_source=substack&utm_medium=email#USPTO

Hearsay and Non-Hearsay
Rule 801

Hearsay

- Definition: A statement made by an out-of-court declarant that is offered to prove the truth of the matter asserted.
- Hearsay statements are excluded from court proceedings because the out-of-court declarant cannot be cross-examined.
- A statement can be an oral or written assertion or nonverbal conduct that is intended as an assertion.
- The declarant must be a human. A computer-generated statement would not be hearsay, but a statement typed into a computer by a human would be.
- The statement must be offered to prove its validity, not for any other purpose. For example, if offering that the declarant said "I agree" to prove an oral contract, that is not being offered to prove the truth of the statement and would not be hearsay.

Not Hearsay

- A declarant-witness's prior statement that is either (a) inconsistent with the present testimony and was given under penalty of perjury or (b) consistent with the declarant's testimony and used to rebut an accusation of fabrication or to rehabilitate the witness's credibility.
- An opposing party's statement.

Business Records Hearsay Exception
Rule 803(6)

- Records of a regularly conducted activity, including a business, are excepted from the rule against hearsay.
- The theory behind the business records exception is that the records are sufficiently trustworthy because they were made through a regular process, without the knowledge of future litigation, and by an individual with a presumed expertise of the item recorded.
- Requirements:
  - The record must have been made at or near the time of the recorded activity by someone with knowledge or from information transmitted by someone with knowledge.
  - The record must have been kept in the course of a regularly conducted activity of a business.
  - Making the record also must have been a regular practice.
- These conditions can be shown by the testimony of a qualified witness or a certification that complies with Rule 902(11) or (12).
- The exception does not apply if the opponent proves that the source of the information or the method and/or circumstances of the preparation indicate a lack of trustworthiness.

Expert Witness Qualification and Admissibility
Rule 702

- An expert witness is one who is qualified as an expert by knowledge, skill, experience, training, or education.
- Be prepared to demonstrate the witness's qualifications to be an expert and also the witness's expertise on the specific subject-matter of the proposed testimony.
- If you would like the expert to testify about multiple topics in a broad field, have a separate showing of the expert's qualifications for each topic, not just the general field.
- Understand how the proposed expert reached his or her conclusions and be able to demonstrate that the expert used reliable methods.
- It is important to have more than just a baseline understanding of the subject-matter of the expert's testimony and what research the expert conducted before the trial.
- To have a witness admitted as an expert, the proponent must demonstrate that it is more likely than not that:
  - the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
  - the testimony is based on sufficient facts or data;
  - the testimony is the product of reliable principles and methods; and
  - the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

General Trial Prep

Before Trial

- Know the elements of the claim you are trying to prove.
- Have a plan to prove each element—ideally through two means in case an exhibit is excluded or a witness does not perform as expected.
- Know the weaknesses of your case and create a plan to address them. Although it may not make sense to emphasize the weaknesses of your case, they should not be ignored either.
- Be prepared for testimony, including a review of how and when to object.
- Comply with all pre-trial deadlines.
- Work with opposing counsel to stipulate to uncontested facts.

During Trial

- Before presenting evidence or a witness for testimony, lay the proper foundation.
- Do not let the desire to be a zealous advocate let you lose sight of proper etiquette. Never interrupt the judge or opposing counsel. Do not cut a witness off in the middle of an answer.
- When questioning a witness, listen to an answer before formulating the next question.
- Just because you can object does not mean that you should. Think about the effect on your case strategy.

Judicial Round and Round Supplemental Materials – Excusable Neglect

Assisted by CoCounsel AI, a platform launched by Thompson Reuters through Westlaw

Comparison of the Analysis by Circuit

The Eighth and Tenth Circuits treat the reason for the delay as the most critical *Pioneer* factor, generally reject claims based on ignorance of the law or carelessness, and require movants to demonstrate good faith and minimal prejudice to the opposing party. However, the Tenth Circuit appears to place slightly more emphasis on the blameworthiness of the movant, while the Eighth Circuit focuses on balancing the *Pioneer* factors more equitably.

Eighth Circuit Cases

In re Heyl, 609 B.R. 194 (8th Cir. BAP 2019)
Excuse: Movant was busy during the appeal period with sick mother and other appellate matters
Holding: No excusable neglect

In re President Casinos, Inc., 397 B.R. 468 (8th Cir. BAP 2008)
Excuse: Counsel's emergency appendectomy around the relevant time period
Holding: No excusable neglect given lack of specificity as to his illness

In re Guidant Corp. Implantable Defibrillators Prod. Liab. Litig., 496 F.3d 863 (8th Cir. 2007)
Excuse: Movants failed to comply with court order because counsel provided erroneous email address and counsel had difficulty obtaining information from one of the movants
Holding: No excusable neglect

Rasidescu v. Globe College, Inc., 105 Fed. Appx. 121 (8th Cir. 2004)
Excuse: Misconstrued plaintiff's filings to relate to pending state court action involving same parties
Holding: Excusable neglect given evidence of good faith mistake

Tenth Circuit Cases

Lopez v. Cantex Health Care Centers II, LLC, 2023 WL 7321637 (10th Cir. Nov. 7, 2023)
Excuse: Clerical error caused "miscalendaring" of deadline and staff member was ill
Holding: No excusable neglect; medical issue must be specific and serious

Perez v. El Tequila, LLC, 847 F.3d 1247 (10th Cir. 2017)
Excuse: Answer due date was not properly docketed
Holding: No excusable neglect (true reason for delay was a failure to calendar answer's due date)

United States v. Torres, 372 F.3d 1159 (10th Cir. 2004)
Excuse: Counsel confused filing deadlines for civil and criminal appeals; counsel's withdrawal from his law firm caused significant disruption of his professional life
Holding: No excusable neglect

United States v. Vogl, 374 F.3d 976 (10th Cir. 2004) (criminal case)
Excuse: Inclement weather disrupted operations and only one day delay
Holding: Excusable neglect (decided under F.R.A.P. Rule 4(b)(4), not *Pioneer* analysis)

Bankruptcy Appeals Process

When a bankruptcy court issues an adverse decision, practitioners must analyze the pros and cons of an appeal. If a bankruptcy appeal is warranted, practitioners should prepare to contend with several procedural obstacles. While litigating a bankruptcy appeal can be challenging, careful planning can ease the stresses that come with navigating any procedural challenges. Here is a step-by-step synopsis of the bankruptcy appellate process.

I. Deciding to Appeal
   a. Does appellate jurisdiction exist?
      i. Is the decision final?
      ii. Is an interlocutory order required?
   b. Is your case built on good facts or bad facts?
   c. Does a precedent need to be set? Consider the likely result of the appellate decision.

II. Commencing the appeal
   a. Select a venue—Bankruptcy Appellate Panel, U.S. District Court, or the Circuit Court of Appeals
      i. Note that only five (5) circuits have bankruptcy appellate panels, which are the First, Sixth, Eighth, Ninth, and Tenth circuits.
      ii. Direct Court of Appeal Review pursuant to 28 U.S.C. § 158(d)(2)(A). If the Bankruptcy Court, District Court or Bankruptcy Appellate Panel, acting on its own motion or on the request of a party, or all of the appellants and appellees acting jointly, certify that the appeal involves a question of law to which there is no controlling decision of the court of appeals or the Supreme Court, or involves a matter of public importance; or involves a questions of law requesting resolution of conflicting decisions; or an immediate appeal may materially advance the progress of the case; and the court of appeal authorizes the direct appeal.
   b. File a notice of appeal with the bankruptcy clerk within fourteen (14) days of the entry of the judgment, order, or decree being appealed. Bankruptcy Rule 8002(a)(1).
   c. Move for a stay pending appeal (Bankruptcy Rule 8007(a)(1) & (a)(2)) or the approval of a bond or other security (Bankruptcy Rule 8007(c) & (d)).

III. Litigating the appeal
   a. Initial Filings & Compiling the Record—File with the bankruptcy clerk and serve on the appellee the designation of the record on appeal and statement of issues within fourteen (14) days after (1) the appellant's notice of appeal as of right becomes effective under Bankruptcy Rule 8002 or (2) an order granting leave to appeal is entered. *See* Bankruptcy Rule 8009(a)(1).
   b. Brief/Supplemental Citation Letters
      i. Appellants must meet the briefing requirements as outlined in Bankruptcy Rule 8014(a); appendix requirements as outlined in Bankruptcy Rule 8018(b); and supplemental citation letters as outlined in Bankruptcy Rule 8014(f).
   c. Oral Argument — Any party may file, or a district court or BAP may require, a statement explaining why oral argument should, or should not, be permitted. The parties may agree to submit a case on the brief, but the district court or BAP may direct that the case be argued.

Faculty

Hon. Robert D. Berger is a U.S. Bankruptcy Judge for the District of Kansas in Kansas City, appointed on Oct. 16, 2003, and reappointed on Oct. 16, 2017. Prior to his appointment, Judge Berger practiced law as a bankruptcy and insolvency specialist representing debtors and creditors, and was among the first group of attorneys in Kansas and Missouri to be certified by the American Board of Certification in both consumer and business bankruptcy law. Judge Berger is a member of ABI and the National Conference of Bankruptcy Judges, and a founding member of the Kansas Chapter of the Federal Bar Association. He also is a chapter author for *Collier on Bankruptcy*, *Collier Bankruptcy Practice Guide*, *Kansas Bankruptcy Handbook* and *Practitioner's Guide to Kansas Family Law*. Judge Berger is a frequent lecturer and he has authored articles for various publications, including *The Washburn Law Journal*, the *ABI Journal* and the *Journal of the Kansas Bar Association*. He received his B.A. in history and political science from the University of Kansas in 1983 and his J.D. from Washburn University School of Law in 1986.

Hon. Bonnie L. Clair is Chief Bankruptcy Judge of the U.S. Bankruptcy Court for the Eastern District of Missouri in St. Louis. Prior to her initial appointment in 2020, she spent many years in private practice at Summers Compton Wells LLC representing both creditors and debtors in bankruptcy, commercial, and consumer finance matters; she previously had piloted the field attorney program at Norwest Financial, Inc. (now Wells Fargo Financial, Inc.) and served in the U.S. Attorney General's Honors Program as an attorney with the Office of the U.S. Trustee in St. Louis, Mo., and Little Rock, Ark. She also served as a member of the Region X Committee for the Missouri Office of Chief Disciplinary Counsel and the Missouri Bar's Fee Dispute Resolution Committee panel. Judge Clair appeared on "Jeopardy!" in 2006 and "Who Wants to Be a Millionaire?" in 2002. She received her undergraduate degree from Duke University in 1990 and her J.D. from Washington University School of Law in 1993, where she was an articles editor for the *Journal of Urban and Contemporary Law* (now the *Journal of Law and Policy*), a national competitor in the New York City Bar Moot Court competition and a law clerk for the Civil Division of the U.S. Attorney's Office for the Eastern District of Missouri.

Hon. Thad J. Collins is the Chief Bankruptcy Judge for the Northern District of Iowa in Cedar Rapids, appointed on March 29, 2010. Previously, he clerked for Hon. Michael J. Melloy as Chief Bankruptcy Judge for the Northern District of Iowa and as Chief U.S. District Judge for the Northerm District of Iowa, and for Hon. David R. Hansen, U.S. Eighth Circuit Court Judge. He was also an associate with Leonard, Street and Deinard in Minneapolis and a partner with Pickens, Barnes & Abernathy in Cedar Rapids. Judge Collins is a member of the American, Iowa and Linn County Bar Associations, as well as the Dean Mason Ladd Inn of Court. He received his J.D. from the University of Iowa College of Law in 1990.

Hon. Brian T. Fenimore is a U.S. Bankruptcy Judge for the Western District of Missouri in Kansas City, appointed on Aug. 31, 2017. He served five years as Chief Judge, during which time he served on the Federal Judicial Center's Planning Committee for the 2024 National Leadership Conference for Chief Judges of U.S. District and Bankruptcy Courts. Prior to his appointment to the bench, he

was a partner in the Kansas City, Mo., office of Lathrop & Gage LLP for more than 25 years and co-chaired its Banking & Creditors' Rights practice area, representing debtors, creditors and many other parties in interest. He also represented borrowers and lenders in problem loan matters, including loan enforcement, guarantor liability, workouts, reorganizations and bankruptcies throughout the U.S. Judge Fenimore is admitted to practice in Kansas and Missouri, and before the U.S. Bankruptcy Courts for the Eastern and Western Districts of Missouri and the District of Kansas, as well as the U.S. District Courts for the District of Kansas and the Eastern and Western Districts of Missouri. As a member of the National Conference of Bankruptcy Judges, he currently serves on the Federal Rules Advisory Committee and the Budget Initiatives Committee, and previously served on the Membership Services and New Member Committees. Judge Fenimore is AV-rated by Martindale-Hubbell and has been listed in *The Best Lawyers in America* every year since 2003, among other listings. He is also a frequent speaker and ABI member. Judge Fenimore received his B.S. *magna cum laude* in 1988 in agricultural economics from the University of Missouri-Columbia and his J.D. in 1990 from the University of Michigan Law School, after which he clerked for Hon. Arthur B. Federman.

Hon. Shon K. Hastings is Chief U.S. Bankruptcy Judge for the District of North Dakota in Fargo, appointed in September 2011. She is also designated to preside over bankruptcy cases in the Districts of South Dakota and Minnesota. From 2014-21, she was assigned bankruptcy cases in the District of Nebraska. Judge Hastings serves as a mediator for civil cases in the U.S. District Court for the District of North Dakota and bankruptcy cases in the District of Minnesota. She also has mediated bankruptcy cases in the Northern and Southern Districts of Iowa. In January 2022, she was appointed to the Bankruptcy Appellate Panel of the Eighth Circuit. She began serving as Chief Judge of the Eighth Circuit Bankruptcy Appellate Panel on Jan. 25, 2024. Prior to her appointment, Judge Hastings served as a federal judicial law clerk for two years, associate attorney for Bowman and Brook LLP in Minneapolis for several years and Assistant U.S. Attorney in Fargo for almost 14 years. She received her undergraduate degree and J.D. from the University of North Dakota.

Hon. Mitchell L. Herren is a U.S. Bankruptcy Judge for the District of Kansas in Wichita, appointed in July 2020. His 33 years prior to the bench included practice with a litigation firm in Kansas City, serving as in-house litigation counsel for a large energy company, then returning to private practice for 18 years with a Wichita-based firm, where he served for seven years as managing member and represented clients ranging from individuals to large companies, with a focus on commercial litigation. Judge Herren is a Fellow of the Litigation Counsel of America and the American Bar Foundation. He received his J.D. from the University of Missouri-Kansas City School of Law.

Hon. Cynthia A. Norton is Chief U.S. Bankruptcy Judge for the Western District of Missouri in Kansas City. Prior to her appointment on Feb. 1, 2013, she was a founding partner of Grimes & Rebein, LC in Lenexa, Kan., where she focused on consumer and business bankruptcy, creditors' rights, commercial workouts and related fields. She also clerked for Hon. John E. Rees of the Kansas Court of Appeals and Hon. James A. Pusateri of the U.S. Bankruptcy Court in Topeka, Kan., and was previously an associate with Stinson, Mag & Fizzell, an associate and then partner with Lewis, Rice & Fingers, and Of Counsel with Levy & Craig, and established her own law firm in 1995. She has published an annual column reviewing Eighth Circuit bankruptcy cases of interest for *Norton's Bankruptcy Law Advisor* and has authored numerous articles, book chapters and seminar papers on bankruptcy-related topics, is a Fellow in the American College of Bankruptcy and a member of vari-

ous bankruptcy organizations. She also is the recipient of the Michael R. Roser Excellence in Bankruptcy Award and the Robert L. Gernon Award for Outstanding Contribution to CLE, as well as the NCBJ Excellence in Education Award. Judge Norton received her B.A. in French and art history Phi Beta Kappa and *summa cum laude* from Kansas University in 1981, and her J.D. from the Kansas University Law School in 1984, where she was associate editor of its law review.

Hon. Dale L. Somers is Chief U.S. Bankruptcy Judge for the District of Kansas in Topeka, initially appointed in September 2003. He hears cases in Topeka, Kansas City and Wichita. Previously, he was in private practice for 32 years and a partner in the law firms of Eidson, Lewis, Porter & Haynes and Wright, Henson, Somers, Sebelius, Clark & Baker. Judge Somers was appointed to the Bankruptcy Appellate Panel for the U.S. Court of Appeals for the Tenth Circuit in March 2010. He served as a member of the Judicial Resources Committee of the Judicial Conference of the United States. Judge Somers served on the Board of Governors for the Kansas Bar Association from 1988-98 and as president from 1995-96. He is a Fellow of the of the American College of Bankruptcy and of the American Bar Association. Judge Somers received his undergraduate degree from Kansas State University in 1968 and his J.D. from the University of Kansas School of Law in 1971.

Hon. Kathy A. Surratt-States is a U.S. Bankruptcy Judge for the Eastern District of Missouri in St. Louis, initially appointed on March 17, 2003, and named Chief Judge from Feb. 1, 2013, to June 30, 2022. She began her legal career as law clerk to now-retired Bankruptcy Judge James J. Barta. In 1993, Judge Surratt-States was an associate at Campbell & Coyne, P.C., where her work focused on bankruptcy, commercial litigation and foreclosures. She then moved to Ziercher & Hocker, P.C. in 1998, where she became partner. The firm later merged with Husch Blackwell, where she was a partner in its insolvency practice group until her appointment to the bankruptcy court. In 1997, Judge Surratt-States was appointed to the Panel of Bankruptcy Trustees for the Eastern District of Missouri, and in 1999, she served as the chapter 7 trustee for Family Company of America, then the third-largest grocery store chain in St. Louis. Judge Surratt-States serves on the Board of Catholic Charities of St. Louis and is a member of Altrusa International, Inc. of St. Louis, an international association of professionals dedicated to serving their community. She also is a member of the Missouri Bar, the Bar Association of Metropolitan St. Louis, the Mound City Bar Association, the National Conference of Bankruptcy Judges, ABI and the International Women's Insolvency & Restructuring Confederation (IWIRC). Judge Surratt-States received her B.A. *cum laude* from Oklahoma City University in 1988 and her J.D. from Washington University School of Law in 1991.

Hon. Brian C. Walsh is a U.S. Bankruptcy Judge for the Eastern District of Missouri in St. Louis, appointed in January 2023. Before taking the bench, he practiced for more than 25 years in Atlanta and St. Louis, principally in bankruptcy, restructuring and related fields. Judge Walsh is a Fellow of the American College of Bankruptcy and began his legal career in Kansas City clerking for Judge Pasco Bowman of the U.S. Court of Appeals for the Eighth Circuit. He received his undergraduate degree from Duke University and his J.D. from Harvard Law School.