

5th Circuit Court of Appeals Procedures for 28 U.S.C. 158(d) Appeals

The purpose of 28 U.S.C. 158(d)(2)(A) is to allow direct appeals from bankruptcy courts to the circuit courts of appeals in limited circumstances.

First, the bankruptcy court, district court, bankruptcy appellate panel or all the appellants and appellees acting jointly must certify that the contested ruling satisfies at least one of the three following conditions:

1. involves a question of law for which there is no controlling ruling of the appellate court or supreme court 28 U.S.C. 158(d)(2)(A)(i);
2. involves a question of law requiring resolution of conflicting decisions 28 U.S.C. 158(d)(2)(A)(ii); or
3. an immediate appeal may materially advance the progress of the case 28 U.S.C. 158(d)(2)(A)(iii).

A request for certification must be made within 60 days of the entry of the contested ruling 28 U.S.C. 158(d)(2)(E).

Second, the parties must petition the court of appeals for permission to appeal. 28 U.S.C. 158(d)(2)(A)

The petition must be filed within 30 days of certification of the contested ruling. Bankruptcy Rule 8001(f)(5). The petition and any answer are limited to 20 pages each. The certificate of interested persons, proof of service and the accompanying documents required by Fed.R.App.P. 5(b)(1)(E) do not count toward the page limit.

The petition must include:

a statement of facts sufficient to explain the question presented;
the question itself;
the relief sought;
the reasons why the appeal should be allowed;
which statute(s) or rule(s) authorize the appeal;
proof of service on all counsel at bankruptcy court level;
certificate of interested parties (except for government counsel);
statement that you have contacted or attempted to contact all other parties as to whether an opposition will be filed (necessary only if all parties have not acted jointly to certify);
copy of order or opinion to be reviewed; and,
the certification by the bankruptcy court, district court, bankruptcy appellate panel or, by all appellants and all appellees (if any), acting jointly, that the necessary conditions are met.

This document is an original pleading. It can be mailed in hard copy or Appellate ECF registered filing users may electronically submit documents for filing. The associated fee must be submitted by credit/debit or electronic check through the Pay.gov website. Filers are required to comply with service of the filing in accordance with FRAP 25.