

**Rule 8001. Manner of Taking Appeal; Voluntary Dismissal;  
Certification to Court of Appeals**

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1 (f) CERTIFICATION FOR DIRECT APPEAL TO COURT  
2 OF APPEALS

3 (1) Timely Appeal Required. A certification of a judgment,  
4 order, or decree of a bankruptcy court to a court of appeals under  
5 28 U.S.C. § 158(d)(2) is ineffective until a timely appeal has been  
6 taken in the manner required by subdivisions (a) and (b) of this  
7 rule. If a certification is filed before the time for the filing of a  
8 notice of appeal under Rule 8002 expires, the certification shall be  
9 deemed conditional and the clerk shall enter it on the docket as a  
10 conditional certification. After a notice of appeal has been timely  
11 filed and, if a motion of the kind specified in Rule 8002(b) is  
12 made, the notice of appeal has become effective, the clerk shall re-  
13 enter the certification on the docket as a certification.

14 (2) Court Where Made. A certification that a circumstance  
15 specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists shall be made  
16 in the court in which a matter is pending for purposes of 28 U.S.C.  
17 § 158(d)(2). A matter is pending in a bankruptcy court until the  
18 earlier of the docketing of the appeal in accordance with Rule  
19 8007(b) or the grant of leave to appeal under 28 U.S.C. § 158(a).  
20 A matter is pending in a district court or bankruptcy appellate  
21 panel after an appeal has been docketed in accordance with Rule

22 8007(b) or leave to appeal has been granted under 28 U.S.C. §  
23 158(a).

24 (A) Certification by Court on Request or Court's Own  
25 Initiative.

26 (i) Before Docketing or Grant of Leave to Appeal.

27 Only a bankruptcy court may make a certification on request or on  
28 its own initiative until the earlier of the docketing of the appeal in  
29 accordance with Rule 8007(b) or the grant of leave to appeal under  
30 28 U.S.C. § 158(a).

31 (ii) After Docketing or Grant of Leave to Appeal. After  
32 an appeal has been docketed in accordance with Rule 8007(b) or  
33 leave to appeal has been granted under 28 U.S.C. § 158(a), only  
34 the district court or bankruptcy appellate panel involved may make  
35 a certification on request of the parties or on its own initiative.

36 (B) Certification by All Appellants and Appellees Acting  
37 Jointly. A certification by all the appellants and appellees, if any,  
38 acting jointly may be made by filing the appropriate Official Form  
39 with the clerk of the court in which the matter is pending. The  
40 certification may be accompanied by a short statement of the basis  
41 for the certification, which may include the information listed in  
42 subdivision (f)(3)(C) of this rule.

43 (3) Request for Certification; Filing; Service; Contents.

44 (A) A request for certification shall be filed, within the

45 time specified by 28 U.S.C. § 158(d)(2), with the clerk of the court  
46 in which the matter is pending.

47 (B) Notice of the filing of a request for certification shall  
48 be served in the manner required for service of a notice of appeal  
49 under Rule 8004.

50 (C) A request for certification shall include the following:

51 (i) the facts necessary to understand the question  
52 presented;

53 (ii) the question itself;

54 (iii) the relief sought;

55 (iv) the reasons why the appeal should be allowed and  
56 is authorized by statute or rule, including why a circumstance  
57 specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists; and

58 (v) an attached copy of the judgment, order, or decree  
59 complained of and any related opinion or memorandum.

60 (D) A party may file a response to a request for  
61 certification or a cross-request within 10 days after the notice of  
62 the request is served, or another time fixed by the court.

63 (E) The request, cross request, and any response shall not  
64 be governed by Rule 9014 and shall be submitted without oral  
65 argument unless the court otherwise directs.

66 (F) A certification of an appeal under 28 U.S.C.  
67 § 158(d)(2) shall be made in a separate document served on the

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parties.

(4) Certification on Court's Own Initiative.

(A) A certification of an appeal on the court's own initiative under 28 U.S.C. § 158(d)(2) shall be made in a separate document served on the parties in the manner required for service of a notice of appeal under Rule 8004. The certification shall be accompanied by an opinion or memorandum that contains the information required by subdivision (f)(3)(C)(i)-(iv) of this rule.

(B) A party may file a supplementary short statement of the basis for certification within 10 days after the certification.

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COMMITTEE NOTE

Subdivision (f) is added to the rule to implement the 2005 amendments to 28 U.S.C. § 158(d). That section authorizes appeals directly to the court of appeals, with that court's consent, upon certification that a ground for the appeal exists under § 158(d)(2)(A)(i)-(iii). Certification can be made by the court on its own initiative or in response to a request of a party. Certification also can be made by all of the appellants and appellees.

The rule adopts a bright-line test for identifying the court in which a matter is pending. Under subdivision (f)(2), the bright-line chosen is the "docketing" of an appeal as that concept is used in Rule 8001(c). The term "docketing" an appeal is a term of art governed by Rule 8007(b) that refers to receipt by the clerk of the district court or bankruptcy appellate panel of the completed record transmitted by the clerk of the bankruptcy court. The granting of leave to appeal also serves to identify the court in which a matter is pending for purposes of this rule.

To ensure that parties are aware of a certification, the rule requires either that it be made on the Official Form (if being made by all of the parties to the appeal) or on a separate document

(whether the certification is made on the court's own initiative or in response to a request by a party). This is particularly important because the rule adopts the bankruptcy practice established by Rule 8001(a) and (b) of requiring a notice of appeal in every instance, including interlocutory orders, of appeals from bankruptcy court orders, judgments, and decrees. Because this requirement is satisfied by filing the notice of appeal that takes the appeal to the district court or bankruptcy appellate panel in the first instance, the rule does not require a separate notice of appeal if a certification occurs after a district court or bankruptcy appellate panel decision.

**Rule 8003. Leave to Appeal**

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2           (d) If leave to appeal is required by 28 U.S.C. § 158(a) and has  
3 not earlier been granted, the authorization of a direct appeal by a  
4 court of appeals under 28 U.S.C. § 158(d)(2) shall be deemed to  
5 satisfy the requirement for leave to appeal.

COMMITTEE NOTE

The rule is amended to add subdivision (d) to solve the jurisdictional problem that could otherwise ensue when a district court or bankruptcy appellate panel has not granted leave to appeal under 28 U.S.C. § 158(a)(3). If the court of appeals accepts the appeal, the requirement of leave to appeal is deemed satisfied. However, if the court of appeals does not authorize a direct appeal, the question of whether to grant leave to appeal remains a matter to be resolved by the district court or the bankruptcy appellate panel.