

**JUN 12 2006**

**ORDERED PUBLISHED**

**HAROLD S. MARENUS, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT**

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT**

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In re:	)	BAP No.	AZ-06-1133
	)		
SCOT BERMAN and JOLINDA	)	Bk. No.	05-17496-PHX-JMM
BERMAN,	)		
	)		
Debtors.	)		
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SCOT BERMAN; JOLINDA BERMAN,	)		
	)		
Appellants,	)		
	)		
v.	)	<b>ORDER DENYING REQUEST</b>	
	)	<b>FOR DIRECT APPEAL</b>	
EDWARD J. MANEY, Chapter 13	)		
Trustee,	)		
	)		
Appellee.	)		
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Before: BRANDT, PAPPAS, and SMITH, Bankruptcy Judges.

This is a timely appeal from a final order of the bankruptcy court dismissing appellants' chapter 13 bankruptcy case, which they seek to appeal directly to the court of appeals.

On 20 April 2005, the President signed into law the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 ("BAPCPA"). Among other things, BAPCPA authorizes the direct appeal of a bankruptcy court order to the court of appeals on certification from the appropriate court and acceptance by the court of appeals. See 28 U.S.C. § 158(d)(2).

We deny the request, and publish to emphasize that the direct appeal provision of BAPCPA and the Interim Rules adopted to

1 effectuate it do not apply to appeals arising from bankruptcy cases  
2 filed before 17 October 2005.

3  
4 I.

5 Appellants filed their voluntary petition under chapter 13 of  
6 the Bankruptcy Code<sup>1</sup> on 13 September 2005. On 16 March 2006, the  
7 United States Bankruptcy Court for the District of Arizona entered  
8 an order dismissing appellants' chapter 13 case, and prohibiting  
9 them from filing another chapter 13 case without the court's  
10 permission for 180 days. On 21 March 2006, the bankruptcy court  
11 entered an order denying appellants' motion for reconsideration.

12 Appellants' timely Notice of Appeal states: "The debtors move  
13 the Court and request is made for this appeal to be heard in the 9th  
14 District [sic] Court of Appeals." Notice of Appeal, March 29, 2006,  
15 at p. 2. We construe the notice as seeking to appeal directly to  
16 the Ninth Circuit Court of Appeals.

17  
18 II.

19 The bankruptcy court had jurisdiction via 28 U.S.C. §§ 1334 and  
20 157(b)(1) and (b)(2)(A), and, as elaborated below, we do under 28  
21 U.S.C. § 158(c).

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23 III.

24 A.

25 The "Interim Bankruptcy Rules" promulgated and proposed by the  
26 Judicial Conference of the United States were adopted by most

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<sup>1</sup> Absent contrary indication, all "Code," chapter and  
section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-  
1330 prior to its amendment by BAPCPA, and all "Rule" references  
are to the Federal Rules of Bankruptcy Procedure.

1 bankruptcy courts to implement the legislative changes effected by  
2 BAPCPA. All of the bankruptcy courts in this circuit, including  
3 Arizona, have adopted the Interim Rules, and we have adopted Interim  
4 Rules 8001(f) and 8003(d), pertaining to appeals.<sup>2</sup>

5 Our general order adopting the Interim Rules expressly limits  
6 their applicability to appeals arising out of bankruptcy cases filed  
7 on or after 17 October 2005. The Interim Rule in question,  
8 8001(f)(2), applies only to certifications under 28 U.S.C.  
9 § 158(d)(2), which was added to the Judicial Code by BAPCPA.

10 As relevant here, the Interim Rules provide that the bankruptcy  
11 court (and not a district court or bankruptcy appellate panel  
12 ("BAP")) determines a request to certify a direct appeal until after  
13 "the docketing [in the district court or BAP] in accordance with  
14 Rule 8007(b) of [the] appeal," or until leave to appeal is granted  
15 by the district court or BAP. Interim Rule 8001(f)(2)(A)(i). After  
16 the appeal is docketed or leave is granted, the bankruptcy court

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18 <sup>2</sup> The referenced general orders ("G.O.") are available on  
19 the courts' websites:

20 D. Alaska, G.O. 2005-1 (19 September 2005) & 2005-2 (18 October  
2005) ([www.akb.uscourts.gov](http://www.akb.uscourts.gov));  
21 D. Ariz. G.O. 94 (12 October 2005) ([www.azb.uscourts.gov](http://www.azb.uscourts.gov));  
22 C.D. Cal. G.O. 05-02 (3 October 2005) ([www.cacb.uscourts.gov](http://www.cacb.uscourts.gov));  
23 E.D. Cal. G.O. 05-04 (19 October 2005) ([www.caeb.uscourts.gov](http://www.caeb.uscourts.gov));  
24 N.D. Cal. G.O. 16 (23 September 2005) ([www.canb.uscourts.gov](http://www.canb.uscourts.gov));  
25 S.D. Cal. Amended Bankruptcy G.O. 170 (8 May 2006)  
([www.casb.uscourts.gov](http://www.casb.uscourts.gov));  
26 D. Haw. Admin. Order (14 October 2005) ([www.hib.uscourts.gov](http://www.hib.uscourts.gov));  
27 D. Idaho G.O. 199 (14 October 2005) ([www.id.uscourts.gov](http://www.id.uscourts.gov));  
28 D. Mont. G.O. 2005-03 (17 October 2005) ([www.mtb.uscourts.gov](http://www.mtb.uscourts.gov));  
D. Nev. Dist. Ct. G.O. 110 (14 October 2005)  
([www.nvb.uscourts.gov](http://www.nvb.uscourts.gov));  
D. Or. G.O. 05-1 (11 October 2005) ([www.orb.uscourts.gov](http://www.orb.uscourts.gov));  
E.D. Wash. G.O. 10-05 (17 October 2005) ([www.waeb.uscourts.gov](http://www.waeb.uscourts.gov));  
W.D. Wash. G.O. BAPCPA-1 (14 October 2005)  
([www.wawb.uscourts.gov](http://www.wawb.uscourts.gov)); and  
9th Cir. BAP GO No. 2005-1, 17 October 2005  
([www.ce9.uscourts.gov/bap](http://www.ce9.uscourts.gov/bap)).

1 ceases to have authority to determine direct appeal certification  
2 requests; thereafter, they must be decided by the district court or  
3 BAP in which the appeal is pending. See Interim Rule  
4 8001(f)(2)(A)(ii).

5 While notices of appeal are typically docketed when received by  
6 the district courts and BAPs for informational and administrative  
7 purposes, the docketing of an appeal in a district court and BAP  
8 occurs when the bankruptcy court delivers the completed record on  
9 appeal. Rule 8007(b). We have dispensed with the requirement that  
10 the bankruptcy court deliver the appellate record. Rather, the  
11 bankruptcy court satisfies this requirement by delivering to our  
12 clerk a certificate of readiness, which states that the record on  
13 appeal is complete and ready for delivery. See 9th Cir. BAP Rule  
14 8007(b)-1. Our clerk's office in turn docket the appeal on the  
15 same day it files the bankruptcy court's certificate of readiness.

16 The instant appeal has not yet been docketed within the meaning  
17 of Interim Rule 8001(f)(2) and Rule 8007(b), because appellants have  
18 not yet completed the record. That requires the filing of a  
19 designation of record and a statement of issues, and obtaining all  
20 necessary hearing transcripts. Rule 8006. Consequently, if this  
21 were an appeal in a bankruptcy case commenced on or after 17 October  
22 2005, we would not yet have authority to rule on appellants' direct  
23 appeal request: rather, certification would be a question for the  
24 bankruptcy court.

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26 B.

27 Regarding federal statutes,

28 [t]he general rule is that in the absence of an express  
provision, an act of Congress takes effect on the date of  
its enactment. Arnold v. United States, 13 U.S. (9 Cranch)

1 103, 119, 3 L. Ed. 671 (1815). See generally Hassett v.  
2 Welch, 303 U.S. 303, 58 S. Ct. 559, 82 L. Ed. 858 (1938);  
3 and Shwab v. Doyle, 258 U.S. 529, 42 S. Ct. 391, 66 L. Ed.  
747 (1922).

4 U.S. v. Gavrilovic, 551 F.2d 1099, 1103 (8th Cir. 1977). As noted  
5 in U.S. v. Casson, the source of this doctrine is the Constitution:

6 On this point, the United States Constitution in art.  
7 I, § 7, provides, inter alia:

8 Every Bill which shall have passed the House of  
9 Representatives and the Senate, shall, before it  
10 become a Law, be presented to the President of  
11 the United States; If he approve he shall sign  
12 it \* \* \*.

13 The inescapable conclusion from this language is that  
14 those who drafted the Constitution intended a bill to  
15 'become a law' when the President indicates his approval  
16 by signing it.

17 434 F.2d 415, 418 (D.C. Cir. 1970). See also, Norman J. Singer,  
18 2 Sutherland Statutes and Statutory Construction § 33:10 (6th ed.)  
19 2001.

20 But most of the amendments made by BAPCPA, including the direct  
21 appeal provision, were not effective upon enactment – BAPCPA has an  
22 express provision to the contrary. With a handful of exceptions not  
23 here relevant, BAPCPA's provisions became effective 180 days after  
24 BAPCPA was signed into law. BAPCPA § 1501(a)(1) (uncodified). And  
25 Congress mandated that, with certain exceptions of no moment in this  
26 appeal, "the amendments made by this Act shall not apply with  
27 respect to cases commenced under title 11, United States Code,  
28 before the effective date of this Act." BAPCPA § 1501(b)(1)  
(uncodified). That date was 17 October 2005. See Americredit Fin.  
Servs., Inc. v. Nichols (In re Nichols), 440 F.3d 850, 857 n.6 (6th  
Cir. 2006).

1 As noted above, appellants commenced their bankruptcy case on  
2 13 September 2005, before the effective date. As a result, BAPCPA's  
3 direct appeal provisions do not apply to this appeal.

4 And prior to BAPCPA, a litigant could not obtain review of a  
5 bankruptcy court's order by a court of appeals without first  
6 appealing the order to either a district court or a BAP. See 28  
7 U.S.C. § 158(d)(1). In authorizing direct appeals to the circuit  
8 courts, BAPCPA made a significant change to the bankruptcy appellate  
9 regime.

10 We know of no authority which would allow the direct appeal  
11 requested by appellants. Accordingly, we must deny their request.

12  
13 IV.

14 Neither the direct appeal provision of BAPCPA nor the Interim  
15 Rules implementing it are applicable to an appeal which arose from  
16 a bankruptcy case filed before BAPCPA's 17 October 2005 effective  
17 date, as did this one. Because we have jurisdiction over appeals  
18 from pre-BAPCPA cases absent an effective "opt-out" to the district  
19 court, 28 U.S.C. § 158(c)(1), and appellants did not attempt such an  
20 election,<sup>3</sup> we may rule on appellants' direct appeal request. We deny  
21 that request because there is no authority for a direct appeal from  
22 the bankruptcy court to the court of appeals where, as here, that

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25 <sup>3</sup> If the request were construed as an attempted opt-out to  
26 the district court for the District of Arizona because of its "9th  
27 District Court of Appeal" language, it would fail, as it was in  
28 the notice of appeal, rather than the separate writing Rule  
8001(e) requires. Nor can appellants now cure that deficiency,  
for 28 U.S.C. § 158(c)(1) requires the request to be made at the  
time of filing the notice of appeal. In re Ioane, 227 B.R. 181  
(9th Cir. BAP 1998); see also In re Sullivan Jewelry, Inc., 218  
B.R. 439 (8th Cir. BAP 1998) (explicating the development of the  
statute and the rule).

1 appeal arises from a bankruptcy case filed before BAPCPA's effective  
2 date.

3       Accordingly, appellants' request to appeal directly to the  
4 Court of Appeals is ORDERED DENIED.

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