

2.1.06 | PETITIONS FOR PERMISSION TO APPEAL AND ANSWERS TO PETITION

- **Controlling Question of Law**

Under 28 U.S.C. § 1292(b), a district judge may certify that an interlocutory order in a civil action involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation. Upon application made to the court of appeals within 10 days of entry of the order, the court of appeals may, in its discretion, permit an appeal to be taken from such order. See Fed. R. App. P. 5; Local Rule 5.

- **Direct Bankruptcy Appeals**

A petition for permission to appeal an order of the bankruptcy court directly to the court of appeals may be filed if a timely notice of appeal was filed in the bankruptcy court (within 14 days of entry of the order as provided in Bankr. R. 8002), and if a motion for certification of the order has been filed within 60 days of entry of the order. The order must be certified by the bankruptcy court (before docketing of the appeal), by the district court (after docketing of the appeal), or by all appellants and appellees:

- to involve a question of law as to which there is no controlling decision of the court of appeals or Supreme Court or that involves a matter of public importance;
- to involve a question of law requiring resolution of conflicting decisions; or
- that an immediate appeal may materially advance the progress of the case.

28 U.S.C. § 158(d)(2). A petition for permission to appeal may be filed in the court of appeals within 30 days after certification of the order. Bankr R. 8006.

- **Class Action Certification Orders**

Under Fed. R. Civ. P. 23(f), a party may apply to the court of appeals for leave to appeal within 14 days of entry of an order granting or denying class action



certification, and the court of appeals may, in its discretion, permit an appeal to be taken from such order.

- **Class Action Remand Orders**

Under 28 U.S.C. § 1453(c), a petition for permission to appeal may be filed within 10 days of entry of an order granting or denying a motion to remand a class action to the state court from which it was removed. If the court of appeals grants permission to appeal under FRAP 5, the appeal under § 1453(c) must be decided within 60 days of the order granting permission to appeal. See Citifinancial v. Lightner, No. 07-200 (4th Cir. Aug. 2, 2007).

- **Content and Format**

The petition must include the facts necessary to understand the question presented; the question itself; the relief sought; the reasons why the appeal should be allowed and is authorized. Copies of the opinion and order authorizing an interlocutory appeal and a disclosure statement must be attached. The petition must not exceed 5,200 words (20 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A certificate of compliance with type-volume limit is required if produced by computer. Fed. R. App. P. 5(b) & (c).

- **Answer or Cross-Petition**

A party may file an answer in opposition or a cross-petition within 10 days after service of a petition for permission to appeal. The answer or cross-petition must not exceed 5,200 words (20 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A certificate of compliance with type-volume limit is required if produced by computer. Fed. R. App. P. 5(b) & (c).

(4th Circuit Court of Appeals // December 2023)

