

Annual Report of Bankruptcy Appeals in Participating BAP Districts for the Calendar Year July 1, 1996—June 30, 1997

Prepared by the BAP Clerk's Office
on behalf of the
United States Bankruptcy Appellate Panel
of the Tenth Circuit

August 21, 1997

as amended
October 8, 1997

PRELIMINARY NOTES

The following numbers were calculated from monthly reports provided by the Bankruptcy Courts, and from statistics provided by the Administrative Office of the United States Courts. These reports were cross referenced, and the relevant dockets of both the Bankruptcy Courts and the District Courts were examined to verify the information.

ELECTIONS (Filed Appeals)

The following chart shows the data for all appeals in which the notice of appeal was filed with the Bankruptcy Court between July 1, 1996, and June 30, 1997. The data contained in this table was selected using criteria that differs from that used to select data for the other tables contained in this report,¹ and thus the information in this table will not necessarily correspond to that contained in the other tables.

				Percent of All Appeals:
All appeals:	170			100.0%
Initial election to appear before the BAP:		91		53.5%
Initial elections to have appeal heard by District Courts:		79		46.5%
BAP appeals transferred to District Court on subsequent election:			27	15.9%
Total cases electing to proceed before BAP:	64			37.6%
Total cases electing to proceed before District Courts:	106			62.4%

¹For the purposes of this particular table, information was gathered regarding all appeals filed during the period from July 1, 1996, to June 30, 1997. All later tables looked only at appeals docketed by either the District Court or the BAP during that time period. Two factors made the use of the notice of appeal date necessary. First, several notices of appeal were disposed of by the Bankruptcy Court before the record was sent to the District Court; excluding these appeals would exclude information regarding initial elections. Second, three subsequent elections were granted by the BAP, but no District Court case number has been assigned (two were disposed of prior to transmission of the record; the third has not yet been transmitted).

ELECTIONS (Docketed Appeals)

The following chart is based only upon cases docketed by either the District Courts or the BAP between July 1, 1996, and June 30, 1997. This accords with the practice of the Administrative Office.

				Percent of All Appeals:
Total number of appeals docketed:	150			100.0%
Appeals initially docketed with the BAP:		89		59.3%
Appeals subsequently transferred to the District Courts:			27 ¹	18.0%
Appeals initially docketed with the District Courts:		61		40.7%

(cont'd)

¹Of the 27 appeals transferred to the District Courts by the BAP prior to July 1, 1997, the record had not been transmitted to the District Court in three appeals. (At the direction of all of the District Courts, the BAP sends the record to the Bankruptcy Court on the granting of a subsequent election. The Bankruptcy Court then transmits the record when complete to the District Court.) Two of these three appeals were dismissed by the Bankruptcy Court prior to the transmission of the record to the District Court; the third appeal remains outstanding.

ELECTIONS (Docketed Appeals) (cont'd)

Because three of the appeals transferred from the BAP to the District Court have not been docketed by the District Court, the total number of appeals subject to final disposition before each court is as follows:

				Percentage of Docketed and Proceeding Appeals:
Total appeals docketed and proceeding before both intermediate appellate courts:	147			100.0%
Appeals docketed and finally proceeding before the BAP:		62		42.2%
Appeals docketed and finally proceeding before District Courts:		85		57.8%
Appeals docketed with District Courts that were assigned to U.S. Magistrate:			28	19.0% (32.9% of all docketed District Court appeals)

DISPOSITIONS

The following chart is based only upon cases docketed by either the District Courts or the BAP between July 1, 1996, and June 30, 1997. This accords with the practice of the Administrative Office.

Appeals docketed and finally proceeding before the BAP:	62			
Appeals disposed of by the BAP:		35		
Disposed BAP appeals as percentage of all appeals finally proceeding before the BAP:				56.5%

Appeals docketed and finally proceeding before the District Courts:	85			
Appeals disposed of by the District Courts:		32		
Disposed appeals in which US Magistrate was assigned:			9	(28.1% of all dispositions entered by the District Courts)
Disposed District Court appeals as percentage of all appeals finally proceeding before the District Court:				37.6%

DISPOSITIONS ON THE MERITS

The following calculations are based only on appeals actually disposed of by either the District Court or the BAP between July 1, 1996, and June 30, 1997.

				Percentage of Appeals Disposed of by That Court:
Appeals Disposed of by the BAP:	35			100.0%
Appeals Disposed of by the BAP on the Merits:		13		37.1%
Appeals Affirmed:			10	
Appeals Reversed (or Reversed and Remanded):			3	
Appeals disposed of by the District Courts:	32			100.0%
Appeals Disposed of by the District Courts on the Merits:		15		46.9%
Appeals Affirmed:			12	
Appeals Reversed (or Reversed and Remanded):			3	

DISPOSITION TIME

The following calculations are based only on appeals actually disposed of by either the District Court or the BAP between July 1, 1996, and June 30, 1997. Note that the disposition time is measured from the date that the notice of appeal was filed with the Bankruptcy Court to the date of entry of the final disposition in the appeal.

These numbers must be considered somewhat misleading, since numerous appeals before both courts remain undecided. The accuracy of these figures can be estimated by examining the percentage of appeals received by the court that were disposed of during the year; this suggests how many cases with a lengthy disposition time remain as yet unreported.

BAP Appeals--Average Disposition Time:	113.0
Median Disposition Time:	70.0
District Court Appeals--Average Disposition Time:	137.7
Median Disposition Time:	153.5

APPEALS TO CIRCUIT

The figures below provide the number of appeals from the intermediate appellate courts to the Tenth Circuit Court of Appeals between July 1, 1996, and June 30, 1997. Appeals filed after June 30, 1997, are not included.

			% of Appeals decided by that court:
Appeals from BAP to Circuit:	4 ¹		11.4%
Appeals from District Courts to Circuit:	4 ²		12.5%

¹Three of these appeals remain pending before the U.S. Court of Appeals for the Tenth Circuit; the fourth appeal was dismissed for failure to prosecute.

²Three of these appeals remain pending before the U.S. Court of Appeals for the Tenth Circuit; the fourth appeal was affirmed.

APPENDIX

In preparing this report, a significant number of discrepancies were noted between the information prepared by the Bankruptcy Courts, and the information prepared by the Administrative Office of the United States. The BAP Clerk's Office obtained the docket sheets for every appeal listed in either location, and individually reviewed each case to determine whether the case should be counted for the purpose of this report.

Comparing these reports against each other revealed several cases that were inadvertently excluded, and others that were inadvertently included. Some reasons for these discrepancies were:

1. "Straddle" cases. Administrative Office figures were based on the date that the District Court opened the appeal, not the date that the notice of appeal was filed in the Bankruptcy Court. As a result, numerous District Court appeals were counted by the Administrative Office that were filed prior to the date the BAP came into existence (July 1, 1996).
2. Computer error. Administrative Office figures included several appeals that were not filed within the relevant time period (in some cases, these appeals were several years old). This erroneous counting appeared to have been the result of a computer error, triggered when the District Court docketed the receipt of the mandate from the Tenth Circuit Court of Appeals.
3. Other. Overcounting or undercounting also resulted for a variety of other reasons. For example, an employment discrimination action before the District Court was miscoded as a bankruptcy appeal, causing it to be included in Administrative Office figures. Conversely, a few appeals were inadvertently excluded from Administrative Office figures; these were cross appeals to the District Courts that were mistakenly consolidated with previous appeals without assigning a new case number. A few appeals were also inadvertently omitted from the reports submitted directly by the Bankruptcy Court to the BAP Clerk's Office.

The present report incorporates and reconciles all of the information from all sources.