

From: [A Benjamin Goldgar](#)
To: [RulesCommittee Secretary](#)
Subject: Suggested change to Fed. R. Bankr. P. 8006(g)
Date: Monday, September 20, 2021 4:05:50 PM

21-BK-M

I write to suggest a change to Bankruptcy Rule 8006(g). The rule concerns direct appeals from bankruptcy court decisions. It currently says that once a certification for direct appeal to the court of appeals becomes effective, a request for leave to appeal “must be filed” with the circuit clerk. The problem with the current rule is that its passive construction leaves it unclear who can file the request. The appellant? The appellee? Either?

The current wording causes confusion. I offer a pending appeal from one of my own decisions as an example. The appeal raises an important question on which courts are split. To have the court of appeals resolve the split, I certified the appeal for direct appeal. But the appellants figured they were better off in the district court (for some reason) and notified the court of appeals they had no intention of filing the request. Could the appellee then have filed his own request, time permitting? He didn’t, and although I’m unsure why he didn’t, uncertainty over his right to file one could well have been the reason.

I suggest adding a single sentence to the rule clarifying who can file the request for leave to appeal. Very simply: “Any appellant or appellee may file the request.” (Another possibility: “Any party to the appeal may file the request.”)

Thank you for your consideration.

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