February 2026

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Bankruptcy Law

Essential Bankruptcy Fundamentals, Ninth Circuit Appellate Finality, Military Client Protections

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Read CLE Article #20:

10 Things Non-Bankruptcy Lawyers Should Know About Bankruptcy

By Candace Carlyon

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On the cover: 40 Year Club Member Candace Carlyon

Understanding the Uncertain Nature of "Finality" in the Ninth Circuit

By Jimmy Dahu

28 U.S.C. § 158(a) authorizes appeals "from final judgments, orders, and decrees …." This finality principle is nuanced in bankruptcy cases, with orders being "'immediately appeal[able] if they finally dispose of discrete disputes within the larger [bankruptcy] case.'" *Bullard* v. *Blue Hills Bank*, 575 U.S. 496, 501 (2015) (quoting *Howard Delivery Serv. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 657 n.3 (2006)). Knowing what constitutes a "discrete dispute" that is "immediately appealable" is critical for bankruptcy counsel. While two recent decisions from the Supreme Court of the United States ("Supreme Court") provide helpful guidance, practitioners in the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") must be aware of the Ninth Circuit's self-described less than "pellucid" precedent that continues to be applied today. *See Eden Place, LLC v. Perl (In re Perl)*, 811 F.3d 1120, 1126 (9th Cir. 2016).

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Recent Supreme Court Decisions

In *Bullard*, the Supreme Court held that the denial of a chapter 13 plan was not an "immediately appealable proceeding" under 28 U.S.C. § 158(a) because—unlike confirmation or case dismissal—it did not "alter[] the status quo and fix[] the rights and obligations of the parties."

Five years after *Bullard*, the Supreme Court in *Ritzen Grp., Inc. v. Jackson Masonry, LLC* held that an order resolving a motion for relief from the automatic stay is "immediately appealable" because it "initiates a discrete procedural sequence, including notice and a hearing, and the creditor's qualification for relief turns on the statutory standard, *i.e.*, 'cause' or the presence of specified conditions." 589 U.S. 35, 43 (2020).

The Ninth Circuit's Less Than "Pellucid" Precedent

In *Perl*, the Ninth Circuit stated that its precedent "has not been entirely pellucid regarding the flexible concept of finality in the bankruptcy context." 811 F.3d at 1126. In speaking to this issue, the *Perl* panel identified a four-part finality test "utilized almost exclusively when determining the finality of a case involving a remand to the bankruptcy court" and a two-part test utilized "when the decision of the bankruptcy court is affirmed or reversed, rather than remanded…." *Id.*

Bullard and *Ritzen*, however, do not impose differing tests to determine the "finality" of bankruptcy orders. Nevertheless, the Ninth Circuit continues to apply a four-part test in some instances (*see*, *e.g.*, *Albert v. State Bar of Calif. (In re Albert)*, 2025 WL 1452555 (9th Cir. May 21, 2025)); a two-part test in other instances (sometimes with, and sometimes without, citation to the standard referenced in *Bullard/Ritzen*) (*see*, *e.g.*, *Moore v. Martin-Bragg (In re Martin-Bragg)*, 2024

WL 209753 (9th Cir. Jan 19, 2024) (does not cite to *Bullard* or *Ritzen*); *Harrington v. Mayer (In re Mayer)*, 28 F.4th 67 (9th Cir. 2022) (cites to *Ritzen*); *Baek v. Halvorson*, 830 Fed. Appx. 544 (9th Cir. Dec. 3, 2020) (unpublished) (does not cite to *Bullard* or *Ritzen*)); and the *Bullard*/*Ritzen* test in other instances (without reference to either of the Ninth Circuit's two-part or four-part tests in its less than "pellucid" precedent) (*see Fantasia v. Diodata*, 154 F.4th 1123 (9th Cir. 2025)). This has created inconsistent results.

For example, in *Elliot v. Four Seasons Props. (In re Frontier Props., Inc.)*—decided prior to *Bullard* and *Ritzen*—the Ninth Circuit utilized its ***two-part test*** in determining that a bankruptcy court's order ***establishing administrative expense liability*** was not final until a state court liquidated the creditor's claim. 979 F.2d 1358 (9th Cir. 1992). In *In re Perl*—decided after *Bullard* but before *Ritzen*—the Ninth Circuit utilized its ***two-part*** test in determining that a bankruptcy court's order ***establishing civil contempt liability*** was a final order notwithstanding the unliquidated nature of civil contempt sanctions. *See* 811 F.3d at 1126-27 ("[T]he bankruptcy court's [civil contempt] determination … is a substantive ruling with real effects, including money damages . . . ."). Meanwhile, in *Ocwen Loan Serv., LLC v. Marino (In re Marino)*—decided after *Ritzen*—the Ninth Circuit utilized its ***four-part test*** in determining that the Ninth Circuit Bankruptcy Appellate Panel's ("BAP") affirmance of a bankruptcy court's ***civil contempt order that liquidated the amount of sanctions*** was not final because the BAP remanded the matter to the bankruptcy court to make findings regarding punitive damages. 949 F.3d 483 (9th Cir. 2020).

The foregoing cases reached inconsistent results on analogous facts by continuing to utilize different tests the Ninth Circuit stated in 2016 resulted in its less than "pellucid" precedent. In this uncertain environment, practitioners need to take a careful, cautious, and comprehensive approach to assessing the finality of bankruptcy orders in the Ninth Circuit. **C**

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