

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE)	
)	Case No. 05-05422-TLM
MICHAEL A. STELLA,)	
)	SUMMARY ORDER
Debtor.)	
)	
)	
)	
_____)	

Michael A. Stella (“Debtor”) moves this Court, pursuant to District of Idaho General Order 38, for an order extending the time to file an opening brief in his appeal to the District Court. Doc. No. 120. Debtor is appealing this Court’s order denying confirmation of his second amended plan. Doc. No. 83.

General Order 38 states in relevant part that “all motions for extensions of time relating to appellate procedures shall be filed with the bankruptcy court and determined by a bankruptcy judge.”¹

However, pursuant to Fed. R. Bankr. P. 8011(a):

A request for an order or other relief shall be made by filing with the clerk of the district court or the clerk of the bankruptcy appellate panel a motion for such order or relief with proof of service on all other parties to the appeal.

A plain reading of the rule would indicate that motions for orders for relief must be (“shall be”) filed either with the district court or bankruptcy appellate

¹ General Order 113 amended General Order 38 but left the foregoing procedure intact. See General Order 113 at § 2.03(c).

panel. *See In re Total Success, Inc.*, 47 B.R. 861, 862 (Bankr. D. Ariz. 1985) (“Bankruptcy court jurisdiction is essentially limited to hearing timely motions to extend the appeal time [under Fed. R, Bankr. P.] 8002(c).”).

The appeal in this case has been referred to the District Court. *See* Doc. No. 110. It has been assigned Case No. CIV-06-369-S-BLW. *Id.* Accordingly, the Court refers resolution of Debtor’s motion, Doc. No. 120, to the District Court for adjudication.

DATED: November 3, 2006




TERRY L. MYERS
CHIEF U. S. BANKRUPTCY JUDGE