

NEW APPEALS & PETITIONS

Final Judgment Rule

In general, appeal may be taken only from a final judgment or order disposing of all claims against all parties, and leaving nothing for the district court to do but execute the judgment. 28 U.S.C. § 1291. The principal exceptions to the requirement of a final judgment are:

- **Collateral Order Doctrine**

Under the collateral order doctrine established in Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546 (1949), an order that determines a right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated can be immediately appealed.

- **Rule 54(b) Appeal from Partial Judgment Made Final Under Rule 54(b)**

When more than one claim for relief is presented in an action, the district court may direct the entry of a final judgment as to one or more but fewer than all the claims or parties upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment to permit appeal to be taken from the claims as to which final judgment was entered.

- **Interlocutory Appeals from Injunctive Orders**

Under 28 U.S.C. § 1292(a)(1), interlocutory orders granting, denying or modifying injunctions are appealable.

Civil Appeals

The timely filing of a notice of appeal in civil cases is mandatory and jurisdictional. Unlike the criminal appeal period, which appears only in the rules of procedure, the civil appeal period is set by statute in 28 U.S.C. § 2107 and is therefore mandatory and jurisdictional. See Bowles v. Russell, 551 U.S. 205 (2007).

- **Appeal Period**

Notice of appeal in a civil case must be filed "within 30 days after the date of entry of the judgment or order appealed from." Fed. R. App. P. 4(a)(1). When the United States, its agency, or officer is a party, the time within which any party may file a notice of appeal is increased to 60 days. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice of appeal was filed, or within the time otherwise prescribed for a civil appeal, whichever is later. Fed. R. App. P. 4(a)(3).

- **Entry of Judgment**

A judgment or order is entered for purposes of appeal when the judgment or order is entered in the civil docket under Fed. R. Civ. P. 79(a). In addition, if Fed. R. Civ. P. 58(a) requires a separate document, the judgment or order is not entered for purposes of appeal until it is set forth on a separate document or until 150 days have run from entry of the judgment or order in the civil docket in accordance with Fed. R. Civ. P. 79(a). A separate document is not required for orders disposing of the post-judgment motions listed in Fed. R. Civ. P. 58(a). A failure to set forth a judgment or order on a separate document when required by Fed. R. Civ. P. 58(a) does not affect the validity of an appeal from that judgment or order. Fed. R. App. P. 4(a)(7).

- **Filing Before Entry of Judgment**

A notice of appeal filed after the court announces a decision or order — but before the entry of the judgment or order — is treated as filed on the date of and after the entry. Fed. R. App. P. 4(a)(2).

- **Post-Judgment Motions**

A notice of appeal filed prior to, or during the pendency of the following motions does not divest the district court of jurisdiction to rule on the motion. The appeal is valid but does not proceed until after disposition of the timely post-judgment motion. The time for filing the notice of appeal from final judgment does not begin to run until disposition of the post-judgment motion. If appellant wishes to also appeal the district court action on the post-judgment motion, appellant must timely file an amended notice of appeal. Fed. R. App. P. 4(a)(4).

- Motions for judgment under Fed. R. Civ. P. 50(b) filed within 28 days of entry of judgment;
- Motions to amend or make additional findings of fact under Fed. R. Civ. P. 52(b) filed within 28 days of entry of judgment;
- Motions to alter or amend the judgment or to grant a new trial under Fed. R. Civ. P. 59 filed within 28 days of entry of judgment;
- Motions for attorney's fees under Fed. R. Civ. P. 54 filed within 14 days of entry of judgment if a district court extends the time for appeal under Rule 58;
- Motions for relief under Fed. R. Civ. P. 60 if the motion is filed within 28 days of entry of judgment.

- **Extension of Appeal Period**

Upon a showing of excusable neglect or good cause, the district court may extend the time for filing a notice of appeal upon motion filed not later than 30 days after expiration of the appeal period. Fed. R. App. P. 4(a)(5).

- **Reopening of Appeal Period**

In addition, under Fed. R. App. P. 4(a)(6), if the district court finds that a party did not receive notice under Fed. R. Civ. P. 77(d) of the entry of judgment within 21 days after entry and that no party would be prejudiced by reopening the time to appeal, upon motion filed within 180 days after entry of judgment or within 14 days after the moving party receives or observes written notice of entry, whichever is earlier, the district court may reopen the time for appeal for a period of 14 days from entry of the order reopening the time for appeal.

- **Appeal from a Final Decision of the Magistrate Judge**

If the parties consent to the magistrate judge's conduct of all proceedings including entry of judgment in a civil matter, an appeal from the magistrate judge's final judgment is taken in the same manner as an appeal from any other judgment of a district court. 28 U.S.C. § 636(c)(1)-(3); Fed. R. App. P. 3(a)(3).

If the district court designates a magistrate judge to conduct hearings, including evidentiary hearings, and to submit proposed findings of fact and recommendations for disposition, any party may, within 14 days after being served with a copy of the magistrate judge's findings and recommendations, file in the district court objections thereto. 28 U.S.C. § 636(b)(1)(B)-(C). Filing of objections in the district court is essential to preserve review in the court of appeals.

- **Appeal in a Bankruptcy Case**

An appeal to the court of appeals from a final judgment of a district court exercising jurisdiction under 28 U.S.C. § 1334 is taken as any other civil appeal. Fed. R. App. P. 6(a). An appeal to the court of appeals pursuant to 28 U.S.C. § 158(d)(1) from a final judgment of a district court exercising appellate jurisdiction pursuant to 28 U.S.C. § 158(a) is taken as any other civil appeal, although with some variation in procedure, as provided in Fed. R. App. P. 6(b). The Fourth Circuit has not established panels of three bankruptcy judges to hear appeals from bankruptcy courts pursuant to 28 U.S.C. § 158. Internal Operating Procedure 6.1.

Criminal Appeals

Because the criminal appeal period is set only by rule, and not by statute, a timely criminal appeal is a "claims processing" rather than a jurisdictional requirement and can be waived. See United States v. Urutyany, 564 F.3d 679 (4th Cir. 2009).

- **Appeal Period**

The defendant's notice of appeal must be filed within 14 days after entry on the docket of the judgment or order appealed from. Fed. R. App. P. 4(b). When an appeal by the Government is authorized by statute, the Government must file its notice of appeal within 30 days after entry of judgment. A defendant may file a cross appeal within 14 days after the filing of a notice of appeal by the Government. Fed. R. App. P. 4(b). The Government may file a cross appeal within 30 days of filing of a notice of appeal by the defendant.

- **Filing Before Entry of Judgment**

A notice of appeal filed after the court announces a decision or order — but before the entry of the judgment or order — is treated as filed on the date of and after the entry. Fed. R. App. P. 4(b)(2).

- **Post-Trial Motions**

If the defendant makes a timely post-trial motion, an appeal from a judgment of conviction must be taken within 14 days after entry of the order disposing of the last such motion outstanding, or within 14 days after entry of the judgment of conviction, whichever is later. Fed. R. App. P. 4(b). A notice of appeal filed after the court announces a sentence but before it disposes of one of these motions is ineffective until the date of entry of the order disposing of the last such motion outstanding, or until the date of entry of the judgment of conviction, whichever is later. A valid notice of appeal is effective without amendment to appeal from an order disposing of any of the motions.

- Motion for judgment of acquittal filed under Fed. R. Crim. P. 29 within 14 days after guilty verdict;
- Motion for arrest of judgment filed under Fed. R. Crim. P. 34 within 14 days after verdict or plea of guilty;
- Motion for a new trial on any ground other than newly discovered evidence filed under Fed. R. Crim. P. 33 within 14 days after guilty verdict;
- Motion for a new trial based on the ground of newly discovered evidence if the motion is made before or within 14 days after entry of judgment.

- **Motion to Correct Sentence**

The filing of a motion to correct a sentence under Fed. R. Crim. P. 35 *does not* toll the time to appeal the judgment of conviction. Fed. R. App. P. 4(b)(5).

- **Extension of Appeal Period**

Upon a finding of excusable neglect, the district court may--before or after the time has expired, with or without motion and notice--extend the time for filing a notice of appeal for a period not to exceed 30 days from expiration of the prescribed time. Fed. R. App. P. 4(b)(4).

Content of Notice of Appeal

The notice of appeal must:

- specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as “all plaintiffs,” “the defendants,” “the plaintiffs A, B, et al.,” or “all defendants except X”;
- designate the judgment, order, or part thereof being appealed; and
- name the court to which the appeal is taken.

A pro se notice of appeal is considered filed on behalf of the signer and the signer’s spouse and minor children (if they are parties), unless the notice clearly indicates otherwise. A pro se notice of appeal must be signed in accordance with Fed. R. Civ. P. 11(a), but the absence of a signature may be remedied by filing a corrected notice of appeal after the appeal period has expired. Becker v. Montgomery, 532 U.S. 757 (2001). In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

Jurisdiction of District Court Pending Appeal

As a general rule, an appeal divests the district court of power to modify its judgment or take other action affecting the cause without permission from the court of appeals, except insofar as a statute or rule expressly reserves the district court’s jurisdiction in aid of appeal. Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982). If, however, the appeal is from an interlocutory order, the district court retains jurisdiction to act on matters not involved in the appeal unless an order is entered staying the remainder of the proceedings. See Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373, 378-79 (1985). The district court also retains jurisdiction to act in aid of the appeal, including acting on the following matters:

- Act on timely post-judgment motions, as provided in Fed. R. App. P. 4(a)(4) & 4(b);
- Correct clerical mistake in civil judgment or order as provided in Fed. R. Civ. P. 60(a) before appeal is docketed in appellate court, and thereafter while appeal is pending with leave of appellate court;

- Deny Fed. R. Civ. P. 60(b) motions filed more than 28 days after judgment; issue an indicative ruling under Fed. R. Civ. P. 62.1 stating that a Rule 60(b) motion filed more than 28 days after judgment raises a substantial issue or would be granted; grant such a motion on a remand from the court of appeals under Fed. R. App. P. 12.1;
- Correct arithmetical, technical, or other clear error in sentence within 14 days of imposition of sentence as provided in Fed. R. Crim. P. 35;
- Act on motions to extend time to appeal pursuant to Fed. R. App. P. 4(a)(5) or 4(b) and to reopen the time to appeal pursuant to Fed. R. App. P. 4(a)(6);
- Act on motions for stay or injunction pending appeal as provided in Fed. R. App. P. 8 and require the filing of an appeal bond under Fed. R. App. P. 7;
- Act on motions for bail pending appeal as provided in Fed. R. App. P. 9(b);
- Act on requests for transcript at government expense under 28 U.S.C. § 753(f) and under the Criminal Justice Act;
- Rule on appellee's request to require appellant to order transcript under Fed. R. App. P. 10(b)(3);
- Settle the record where no transcript is available under Fed. R. App. P. 10(c) or approve an agreed statement of facts in lieu of the record under Fed. R. App. P. 10(d);
- Act on motions to correct, modify, or supplement the record pursuant to Fed. R. App. P. 10(e) and Local Rule 10(d);
- Issue or deny certificates of appealability in orders denying relief under 28 U.S.C. §2254 and 2255, if no ruling was included in final judgment, as required by Rule 11 of the Rules for § 2254 Cases or § 2255 Cases;
- Tax certain costs on appeal under Fed. R. App. P. 39(e);
- Dismiss appeal on stipulation of parties under Fed. R. App. P. 42(a), if appeal has not yet been docketed in court of appeals.

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).

Mandamus Petitions and Answers

Under 28 U.S.C. § 1651, the Supreme Court and all courts established by Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. Petitions for writs of mandamus, prohibition, and other extraordinary relief are governed by Fed. R. App. P. 21.

- **Content and Format**

The petition must state the relief sought, the issues presented, the facts necessary to understand the issues presented, and the reasons why the writ should issue. Any parts of the record necessary to understand the matters set forth and a corporate disclosure statement must be attached. The petition must not exceed 7,800 words (30 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. 21(d).

- **Answers to Mandamus Petitions**

The court may deny the petition without an answer. Otherwise, it must order the respondent to answer within a fixed time. The court of appeals may invite or order the trial-court judge to address the petition or may invite an amicus curiae to do so. The trial-court judge may request permission to address the petition but may not do so unless invited or ordered to do so by the court of appeals. Fed. R. App. P. 21(b).

The answer must not exceed 7,800 words (30 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. 21(d).

- **Crime Victims' Rights Act**

Under the Crime Victims' Rights Act, the district court must permit a victim to be heard at any public proceeding involving release, plea, sentencing, or parole of a criminal defendant. If this right is denied, the victim or the government may file a mandamus petition in the court of appeals, which the court of appeals must decide within 72 hours of filing. To facilitate the court of appeals' resolution of the petition within the 72-hour deadline, the petitioner is required to provide the clerk's office with advance notice of the filing of the petition, identify the petition as one asserting crime victims' rights pursuant to 18 U.S.C. § 3771(d)(3), and arrange for immediate service of the petition on the relevant parties. Local Rule 21(d).

Motions for Authorization to File Successive Post-Conviction Applications

A second petition under 28 U.S.C. § 2254 or 2255 will not be considered by the district court unless the petitioner has obtained authorization from the court of appeals to file a successive application. A motion for authorization to file a successive application may be filed in the court of appeals at any time; however, a one-year limitations period applies to the filing of all §§ 2254 and 2255 motions in the district court. The court of appeals must decide motions for authorization within 30 days of filing. If the court of appeals requires a response to the motion for authorization to file a successive application, it will request a response within no more than 7 days of the date requested. Local Rule 22(d).

Petitions for Review

Review of final agency action is obtained by filing a petition for review with the court of appeals within the time specified by statute. Fed. R. App. P. 15(a). The petition must name each party seeking review either in the caption or in the body of the petition. Use of such terms as "petitioners" or "et al." is not effective to name the parties to a petition for review. The petition must also name the agency as respondent and specify the order to be reviewed. Fed. R. App. P. 15(a). A copy of the order to be reviewed and a list of the respondents to be served and their addresses must also be attached. Local Rule 15(b).

- **Benefits Review Board**

Review of a final decision of the Benefits Review Board is sought by filing a petition for review in the court of appeals within 60 days following issuance of the Board's order. 33 U.S.C. § 921(c).

- **Board of Immigration Appeals**

Review of a final removal order is sought by filing a petition for review within 30 days of issuance of the order. 8 U.S.C. § 1252.

Applications for Enforcement and Answers

- **National Labor Relations Board**

There is no time limit on filing an application for enforcement of or a petition for review from an order of the National Labor Relations Board. 29 U.S.C. § 160.

- **Answer to Application for Enforcement**

Within 21 days after an application for enforcement is filed, the respondent must file an answer to the application. If the respondent fails to answer in time, the court will enter judgment for the relief requested upon the filing of an application for default judgment.

Tax Court Appeals

Review of a decision of the United States Tax Court is commenced by filing a notice of appeal with the Tax Court clerk within 90 days after the entry of the Tax Court's decision. If one party files a timely notice of appeal, any other party may file a notice of appeal within 120 days after the Tax Court's decision is entered. If, under Tax Court rules, a party makes a timely motion to vacate or revise the Tax Court's decision, the time to file a notice of appeal runs from the entry of the order disposing of the motion or from the entry of a new decision, whichever is later. If sent by mail the notice is considered filed on the postmark date. Fed. R. App. P. 13.

Related Links

- [Court Forms & Fees – Notice of Appeal & Petition for Review](#)
- [Rule 3. Appeal as of Right - How Taken \(with Local Rules\)](#)
- [Rule 4. Appeal as of Right - When Taken](#)
- [Rule 5. Appeal by Permission \(with Local Rule\)](#)
- [Rule 6. Appeal in a Bankruptcy Case from a Final Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel \(with IOP\)](#)
- [Rule 13. Review of a Decision of the Tax Court](#)
- [Rule 15. Review or Enforcement of an Agency Order – How Obtained; Intervention \(with Local Rules\)](#)
- [Rule 21. Writs of Mandamus and Prohibition, and Other Extraordinary Writs \(with Local Rule\)](#)