

2.1.02 | 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.

(4th Circuit Court of Appeals // December 2023)

