

2.1.05 | 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.

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

