

Clerk's Office
United States District Court
Eastern District of New York

Dear Litigant:

Enclosed is the decision in your case. Please find a civil appeals packet with instructions.

PLEASE NOTE THE FOLLOWING TIME LIMITATION TO
FILE AN APPEAL:

Rule 4(a)(1) of the Federal Rules of Appellate Procedure requires that, if the decision is appealable and you wish to appeal it, you **MUST** file a notice of appeal within **THIRTY (30)** days of the date of the entry of the judgment (**60** days if the United States or an officer or agency of the United States is a party).

ENTRY DATE
OF JUDGMENT: _____

ROBERT C. HEINEMANN
CLERK OF COURT

By: _____
DEPUTY CLERK

[D01]

NOTICE TO LITIGANT

Filing a Notice of Appeal

Please be advised of the time limitations for filing a notice of appeal under the Federal Rules of Appellate Procedure (See Rule 4, below), and the necessity of filing a motion for extension of time within the 30-day extension period if the notice of appeal is untimely.

Rule 4. Appeal as of Right – When Taken

(a) Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal.

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

(B) When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered.

(C) An appeal from an order granting or denying an application for a writ of error coram nobis is an appeal in a civil case for purposes of Rule 4(a).

(2) **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.

(3) **Multiple Appeals.** 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 was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) Effect of a Motion on a Notice of Appeal.

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);
(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 10 days (computed using Federal rule of Civil Procedure 6(a)) after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment – but before it disposes of any motion listed in Rule 4(a)(4)(A) – the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal, or

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an amended notice of appeal – in compliance with Rule 3(c) – within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(5) Motion for Extension of Time.

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 10 days after the date when the order granting the motion is entered, whichever is later.

(6) **Reopening the Time to File an Appeal.** The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice of the entry, whichever is earlier;

(B) the court finds that the moving party was entitled to notice of the entry of the judgment or order sought to be appealed but did not receive the notice from the district court or any party within 21 days after entry; and

(C) the court finds that no party would be prejudiced.

(7) **Entry Defined.** A judgment or order is entered for purposes of this Rule 4(a) when it is entered in compliance with Rules 58 and 79(a) of the Federal Rules of Civil Procedure.

(b) Appeal in a Criminal Case.

(1) Time for Filing a Notice of Appeal,

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 10 days after the later of:

(i) the entry of either the judgment or the order being appealed; or

(ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:

(i) the entry of the judgment or order being appealed; or

(ii) the filing of a notice of appeal by any defendant.

(2) **Filing Before Entry of Judgment.** A notice of appeal filed after the court announces a decision, sentence, or order – but before the entry of the judgment or order – is treated as filed on the date of and after the entry.

(3) Effect of a Motion on a Notice of Appeal

(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 10 days after the entry of the order disposing of the last such remaining motion, or within 10 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

(i) for judgment of acquittal under Rule 29;

(ii) for a new trial under Rule 33, but, if based on newly discovered evidence, only if the motion is made no later than 10 days after the entry of the judgment; or

(iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order – but before it disposes of any of the motions referred to in Rule 4(b)(3)(A) – becomes effective upon the later of the following:

- (i) the entry of the order disposing of the last such remaining motion; or
- (ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective – without amendment – to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) **Motion for Extension of Time.** Upon a finding of excusable neglect or good cause, the district court may – before or after the time has expired, with or without motion and notice – extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

(5) **Jurisdiction.** The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal rule of Criminal Procedure 35(c), nor does the filing of a motion under 35(c) affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under Federal Rule of Criminal Procedure 35(a) does not suspend the time for filing a notice of appeal from a judgment of conviction.

(6) **Entry Defined.** A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.

(c) Appeal by an Inmate Confined in an Institution.

(1) If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 20 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court docketed the first notice.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.

(d) **Mistaken Filing in the Court of Appeals.** If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF _____

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NOTICE OF APPEAL

Docket No.

Notice is hereby given that _____
(party)

hereby appeals to the United States Court of Appeals for the Second Circuit from the decision
(describe it)

entered in this action on the _____ day of _____, 20____.

Signature

Printed Name

Address

() _____
Telephone No. (with area code)

Date: _____

NOTICE OF APPEAL FORM
(Form 1 is attached.)

NOTE:

You may use this form to take an appeal provided that it arrives in the office of the Clerk of the district court within 30 days of the date of entry of the decision (60 days if the United States or an officer or agency of the United States is a party).

NOTICE OF MOTION FOR EXTENSION OF TIME

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF

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NOTICE OF MOTION FOR
EXTENSION OF TIME

Docket No.

Pursuant to FRAP 4(a)(5), _____ respectfully
(party)
requests leave to file the within notice of appeal out of time. _____
(party)
desires to appeal the decision in this action on _____, but failed to file
(date)
a notice of appeal within the required number of days because: [Explain here the “excusable
neglect” or “good cause” which led to your failure to file a notice of appeal within the required
number of days.]

Signature

Printed Name

Address

() _____
Telephone No. (with area code)

Date: _____

MOTION FOR EXTENSION OF TIME
(Form 2 is attached.)

NOTE:

You may use this form, together with a copy of Form 1, if you are seeking to appeal a decision and did not file a copy of Form 1 within the required time. If you follow this procedure, these forms must be received in the office of the Clerk of the district court no later than 60 days from the date on which the decision was entered (90 days if the United States or an officer or agency of the United States is a party).

COMBINED NOTICE OF APPEAL AND MOTION FOR EXTENSION OF TIME

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF _____

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NOTICE OF APPEAL AND
MOTION FOR EXTENSION OF TIME

Docket No.

1. Notice is hereby given that _____ hereby appeals
(party)
to the United States Court of Appeals for the Second Circuit from the decision entered in this action
on _____. (Describe it).
(date)

2. In the event that this form was not received in the Clerk's Office within the required time
_____ respectfully requests the court to grant an extension of time in
(party)
accordance with FRAP 4(a)(5) for the following reasons which constitute "excusable neglect" or
"good cause" (state reasons):

a. In further support of this request, _____ states that this
(party)
Court's decision was received on _____ and that this form was mailed to the
(date)
court on _____.
(date)

Signature

Printed Name

Address

()
Telephone No. (with area code)

Date: _____

COMBINED NOTICE OF APPEAL AND EXTENSION OF TIME FORM
(Form 3 is attached.)

NOTE:

You may wish to use this form if you are mailing your notice of appeal and are not sure that the Clerk of the district court will receive it within 30 days of the date on which the decision was entered (60 days if the United States or an officer or agency of the United States is a party).