



# THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT



## CIVIL APPEALS MANAGEMENT PLAN'S JURISDICTION CHECKLIST FOR COUNSELED CIVIL APPEALS

### **I. Is the Notice of Appeal timely (a mandatory and jurisdictional requirement)?**

- Filed with the Clerk (Dist. Ct. or USCA) on or before 30 days from entry of final judgment on district court docket;
- if United States is a party, filed by any party within 60 days of entry of judgment;
- Tax Court appeals filed within 90 days of final judgment;
- INS appeals filed within 30 days of BIA decision;
- if incarcerated, timely delivered to custodians; and
- if post-judgment FRAP 4(a)(4) motion filed (or functional equivalent), notice of appeal filed within 30 days from entry of decision on last such motion pending.

### **II. Is the Notice of Appeal adequate?**

- Names party appealing and order(s) appealed from; and
- if sanction against an attorney, names the attorney as appellant.

### **III. Is the judgment final (28 U.S.C. § 1291)?**

- Final disposition of ALL claims as to ALL parties, including amount where there is a monetary award (unless the computation is “ministerial”) (FRCivP 54(b));
- dismissal WITH prejudice (without prejudice is not final, see *Chappelle v. Beacon Communications Corp.*, 84 F.3d 652, 654 (2d Cir. 1996)); and
- determination of liability without determination of remedy is generally not final.

### **IV. Are there FRAP 4(a)(4) (or functional equivalent) post-judgment motions pending in the district court (except attorney fees and costs)?**

- Filed within 10 days of entry of judgment (excluding weekends and holidays) (time for filing cannot be extended by Dist. Ct., see FRCivP 6(b)).

### **V. If non-final, is there an exception to finality rule (28 U.S.C. § 1292)?**

- Grant, denial, continuation, modification or dissolution of injunction is not a final order, but the function controls, not the label. See *Office of Personnel Mgmt. v. American Federation of Gov’t Employees*, 473 U.S. 1301 (1985);
- sanctions payable by a non-party to the litigation (e.g. attorney; the amount must be stated);
- denial of qualified immunity based on question of law alone;
- denial of sovereign immunity;

- admiralty;
- receivership;
- bankruptcy where all issues of a discrete claim are resolved (somewhat more flexible standard than other appeals);
- 54(b) certification, including a “brief, reasoned explanation” of why there is no just reason for the delay of an appeal from partial judgment;
- filing of 1292(b) certification w/in 10 days from district court granting such certification (unlike FRCivP 54(b), § 1292(b) requires certification by both Dist. Ct. and USCA);
- extraordinary writ (e.g. mandamus, habeas corpus);
- abstention, depending upon circumstances;
- sometimes grant/denial of stay of proceedings pending arbitration;
- denial of motion to intervene (except class members);
- some orders directing immediate sale of property;
- denial of class certification, in USCA discretion (see FRCivP 23(f)); and
- collateral orders (see Cohen v. Beneficial Industrial Loan, 337 U.S. 541 (1949)).

**VI. Orders generally NOT immediately appealable.**

- Denial of motion to dismiss or summary judgment;
- grant of partial summary judgment;

- denial of qualified immunity where questions of fact remain;
- remand to Bankruptcy Court for “significant further proceedings;”
- directing arbitration where other claims are retained by the District Court (see *Filanto, S.P.A. v. Chilewich Int'l Corp.*, 984 F.2d 58 (2d Cir. 1993));
- dismissal of some, but not all, claims;
- dismissal of one or more parties, but not all parties;
- grant of new trial;
- grant of motion to transfer to another federal district court;
- stay of arbitration pending determination of agreement to arbitrate;
- denial of motion to certify question to USCA;
- reference of matter to Bankruptcy Court;
- remand to an agency (some exceptions exist, e.g. certain social security cases);
- remand to state court, except in certain civil rights cases (see 28 U.S.C. § 1447(d));
- discovery orders; and
- grant/denial of motion to disqualify counsel.