

# Separate-document rule creates uncertainties

Federal rule requires judgments to be set out separately from opinions in order to start appeals clock.

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Federal Rule of Civil Procedure 58(a) requires that “every judgment and amended judgment” be set out in a “separate document,” distinct from the district court’s opinion or memorandum. The requirement was intended to “eliminate...uncertainties” about when a judgment has entered and the clock for filing post-verdict motions and

notices of appeal begins to run. Advisory Committee Note on Rule 58 (1963 amendments). Far from achieving that goal, the requirement has created a host of uncertainties.

Under Rule 58(a), a district court must set forth every judgment in a separate document, with the exception of rul-

## THE PRACTICE

Commentary and advice on developments in the law

ings on post-verdict motions specified in the rule. When a separate document is not required, the time period for filing a notice of appeal begins to run when the district court’s decision is entered in the docket. When a separate document is required, the time for filing an appeal begins to run when the judgment is set out in a separate document and entered in the docket. Fed. R. Civ. P. 58(c).

Before 2002, the failure of the district court to enter the required separate document left litigants with a potentially never triggered, and thus open-ended, appeal period. The 2002 amendments to Rule 58 addressed this problem by creating a default rule: Whenever a district court issues a dispositive decision or order (i.e., an order from which an appeal lies) but fails to enter its judgment in a separate document, the appeal period begins to run 150 days from the docket entry of the decision or order. Fed. R. Civ. P. 58(c), Fed. R. App. P. 4(a). Given the usual 30-day time limit for filing an appeal, Rule 58 thus creates an outside limit of 180 days to file an appeal.

Whether an appellant has 30 days or 180 days to file an appeal depends on whether the separate-document requirement applies and, if it does, whether the district court has satisfied Rule 58’s requirements. A prudent appellate attorney will pay close attention to these issues, because “[m]isapprehension of Rule 58 can be jurisdictionally fatal to an appeal.” *Local Union No. 1992 of Int’l Bhd. of Elec. Workers v. The Okonite Co.*, 358 F.3d 278, 280 (3d Cir. 2004).

### WHAT ‘SEPARATE DOCUMENT’ MEANS

Determining what constitutes a “separate document” has proven to be more difficult than one might imagine. Understanding circuit court variations is important, because a docket entry that would

trigger the 30-day appeal period in one circuit might not trigger it another. For example, the circuits disagree on whether, to satisfy Rule 58, a document must explicitly be labeled “Judgment” rather than “Order.” The former is a requirement in the U.S. Court of Appeals for the 2d Circuit, e.g., *Redhead v. Conference of Seventh-Day Adventists*, 360 F. App’x 232, 233 (2d Cir. 2010), but not in the 3d Circuit, e.g., *LeBoon v. Lancaster Jewish Cmty. Ctr. Ass’n*, 503 F.3d 217, 224 (3d Cir. 2007).

There is also disagreement about whether a “minute entry” in the docket can satisfy the separate-document requirement. The 7th Circuit has said that it might satisfy the requirement, see *Perry v. Sheet Metal Workers’ Local No. 73 Pension Fund*, 585 F.3d 358, 361 (7th Cir. 2009), while others disagree, see *Theriot v. ASW Well Serv. Inc.*, 951 F.2d 84, 87 (5th Cir. 1992). The Central District of California has addressed this potential confusion in Local Rule 58-6, which states that “[n]otation in the civil docket of entry of a memorandum of decision, an opinion of the Court, or a minute order of the Clerk shall not constitute entry of judgment pursuant to [Fed. R. Civ. P.] 58 and 79(a) unless specifically ordered by the judge.”

Led by the 3d Circuit, courts have tended to focus on three factors in determining whether an order constitutes a “separate document” that satisfies Rule 58. First, the order must be self-contained and separate from the court’s opinion or memorandum of decision. Second, the document must succinctly state the relief granted. And third, it must not contain the court’s reasoning or analysis. *Local Union No. 1992*, 358 F.3d at 285-86.

Courts, however, have struggled with some of these factors. As to the requirement that the judgment be separate from the court’s opinion, courts have looked to whether the document has a separate caption and is separately paginated from the opinion, whether the judge separately signed each document and whether the two documents were separately file-stamped and docketed. See, e.g., *LeBoon*, 503 F.3d at 224; *Alinsky v. U.S.*, 415 F.3d 639, 642-43 (7th Cir. 2005). Yet, even when there is no separate written opinion, because the court’s decision was an oral ruling, a single written order can sometimes constitute the “separate document.” *In re Cendant Corp. Sec. Litig.*, 454 F.3d 235, 242 (3d Cir. 2006).



The third factor—how much analysis is permissible—has been the subject of much judicial attention as well. A simple, unadorned order with no discussion or analysis will satisfy the requirement and trigger the appeal period. But an order with very limited discussion may be permissible. The D.C. Circuit has held that a judgment containing “some minimal amount of legal reasoning” and “some explanation is acceptable—so long as it is very sparse.” *Kidd v. District of Columbia*, 206 F.3d 35, 39 (D.C. Cir. 2000). A single sentence of explanation or a single citation of authority is permissible, *id.*, while a five-page minute entry stating reasons for granting summary judgment is not. *Theriot*, 951 F.2d at 88. Similarly, a single sentence detailing the history of the proceedings did not disqualify an order from being sufficiently “separate,” *In re Schimmels*, 85 F.3d 416, 422 (9th Cir. 1996), but an order with five pages of factual background and procedural history did. *In re Cendant*, 454 F.3d at 243-44.

### EXCEPTIONS TO THE REQUIREMENT

Under Rule 58(a), a separate document is not required for “an order disposing of” certain post-verdict motions. This exception poses additional complications. For example, a separate document is not required for an order denying a motion to alter or amend the judgment, but it is required when the motion is granted and an amended judgment is issued. *Kunz v. DeFelice*, 538 F.3d 667, 673 (7th Cir. 2008).

What if a judge issues a single order that simultaneously disposes of several motions, only some of which are subject to the separate-document requirement? In *Medical Supply Chain Inc. v. Neoforma*

*Inc.*, 508 F.3d 572, 575 (10th Cir. 2007), the 10th Circuit ruled that each order must be considered separately for compliance with Rule 58. In that case, the time to appeal the ruling on motions that were not subject to the separate-document requirement ran from the date the ruling was entered in the docket. But for the other motions, the time to appeal began to run 150 days after that docket entry, because the district court failed to enter judgment on a separate document.

The separate-document requirement does not apply to interlocutory orders that are appealable under the collateral order doctrine, so the appeal period begins to run when the collateral order is entered. It would make little sense “to force trial judges to speculate about the potential appealability of every [interlocutory] order” in order to determine whether a separate document must enter. Advisory Committee Note on Rule 58 (2002 amendments). But a partial judgment (finally disposing of some but not all of the claims or parties) that the court expressly enters pursuant to the Rule 54(b) is subject to the separate-document requirement. *Silvanich v. Celebrity Cruises Inc.*, 333 F.3d 355, 365 (2d Cir. 2003).

### REDUCING THE RISKS

The prudent practitioner can take steps to avoid the ambiguities of the separate-document requirement. First, Rule 58(d) expressly permits counsel to request that a judgment be set out in a separate document. If there is any question about whether the Rule 58(a) requirement applies and has unambiguously been satisfied, counsel should make the request. Second, if such questions exist, there is little risk in taking the conservative route of filing an appeal within 30 days. Rule 58(a) is not jurisdictional, and under Federal Rules of Appellate Procedure 4(a)(2), a prematurely filed appeal—from a decision that would be appealable had judgment properly been entered—becomes effective upon the subsequent entry of judgment. *Outlaw v. Airtech Air Conditioning & Heating Inc.*, 412 F.3d 156, 158 (D.C. Cir. 2005). Finally, a practitioner in state court must be aware of the wide variation in state rules on whether a separate document is required to trigger the appeals period. ■



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