

## **RULE 4. APPEAL—WHEN TAKEN**

### **(a) Appeals in Civil Cases.**

**(1) Time and Location for Filing a Notice of Appeal.** Except as provided in Rule 4(a)(5)-(6), in a civil case in which an appeal is permitted by law from a district court, the notice of appeal required by Rule 3 must be filed with the district court clerk no later than 30 days after written notice of entry of the judgment or order appealed from is served. If an applicable statute provides that a notice of appeal must be filed within a different time period, the notice of appeal required by these Rules must be filed within the time period established by the statute.

**(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 no later than 14 days after the date when the first notice was served, or within the time otherwise prescribed by Rule 4(a), whichever period ends later.

**(4) Entry Defined.** A judgment or order is entered for purposes of this Rule when it is signed by the judge or by the clerk, as the case may be, and filed with the clerk. A notice or stipulation of dismissal filed under NRCP 41(a)(1) has the same effect as a judgment or order signed by the judge and filed by the clerk and constitutes entry of a judgment or order for purposes of this Rule. If that notice or stipulation dismisses all unresolved claims pending in an action in the district court, the notice or stipulation constitutes entry of a final judgment or order for purposes of this Rule.

### **(5) Effect of Certain Motions on a Notice of Appeal.**

(A) If a party timely files in the district court any of the following motions under the Nevada Rules of Civil Procedure, the notice of appeal must be filed no later than 30 days after service of written notice of entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional findings of fact under Rule 52(b), whether or not granting the motion would alter the judgment;

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

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

(v) for relief under Rule 60 if the motion is filed no later than 28 days after service of written notice of entry of the judgment or order.

(B) Notices of appeal involving motions listed in Rule 4(a)(5)(A) are governed by the following:

(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)(5)(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)(5)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the service of written notice of entry of the order disposing of the last such remaining motion.

#### **(6) Motion for Extension of Time.**

(A) Except when an appeal period is set by statute, 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 Rule 4(a) expires; and

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

(B) No extension under Rule 4(a)(6) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

**(7) Premature Notice of Appeal.** A premature notice of appeal does not divest the district court of jurisdiction. The court may dismiss as premature a notice of appeal filed after the oral pronouncement of a decision or order but before entry of the written judgment or order, or before entry of the written disposition of the last-remaining timely motion listed in Rule 4(a)(5). If, however, a written order or judgment, or a written disposition of the last-remaining timely motion listed in Rule 4(a)(5), is entered before dismissal of the premature appeal, the notice of appeal is considered filed on the date of and after entry of the order, judgment or written disposition of the last-remaining timely motion.

**(8) Amended Notice of Appeal.** No additional fees are required if any party files an amended notice of appeal in order to comply with the provisions of this Rule.

**(b) Appeals in Criminal and Postconviction Cases.**

**(1) Time for Filing a Notice of Appeal.**

**(A) Appeal by Defendant or Petitioner.** Except as otherwise provided in NRS 34.560(2), NRS 34.575(1), NRS 176.09183(6), NRS 177.055, Rule 4(b)(4), and Rule 4(c), the notice of appeal by a defendant or petitioner in

a criminal case must be filed with the district court clerk within 30 days after the later of:

- (i) the entry of the judgment or order being appealed; or
- (ii) the filing of the state's notice of appeal.

**(B) Appeal by the State.** Except as otherwise provided in NRS 34.575(2), NRS 176.09183(4), and NRS 177.015(2), when an appeal by the state is authorized by statute, the notice of appeal must be filed with the district court clerk 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 or petitioner.

**(2) Filing Before Entry of Judgment.** A notice of appeal filed after the announcement of a decision, sentence, or order—but before entry of the judgment or order—is treated as filed after such entry and on the day thereof.

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

(A) If a defendant timely makes any of the following motions, the notice of appeal from a judgment of conviction must be filed within 30 days after the entry of the order disposing of the last such remaining motion, or within 30 days after the entry of the judgment of conviction, whichever period comes later. This provision applies to a timely motion:

- (i) for judgment of acquittal under NRS 175.381(2);
- (ii) for a new trial under NRS 176.515, but if based on newly discovered evidence, only if the motion is made no later than 30 days after the entry of the judgment; or

- (iii) for arrest of judgment under NRS 176.525.

(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:

(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.** Except when an appeal period is set by statute, 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.

**(5) Jurisdiction.** The filing of a notice of appeal under Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under NRS 176.555 or NRS 176.565, nor does the filing of a motion under those statutes affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under NRS 176.555 or NRS 176.565 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 when it is signed by the judge and filed with the clerk.

**(7) Time for Entry of Judgment; Content of Judgment or Order in Postconviction Matters.**

**(A) Judgment of Conviction.** The district court judge must enter a written judgment of conviction within 14 days after sentencing.

**(B) Order Resolving Postconviction Matter.** The district court judge must enter a written judgment or order finally resolving any postconviction matter. If the district court judge first makes an oral pronouncement of a final decision in such a matter, the written judgment or

order must be issued within 21 days after the district court judge's oral pronouncement. The judgment or order in any postconviction matter must contain specific findings of fact and conclusions of law supporting the district court's decision.

**(C) Sanctions; Counsel's Failure to Timely Prepare Judgment or Order.** The court may impose sanctions on any counsel instructed by the district court judge to draft the judgment or order and who does not submit the proposed judgment or order to the district court judge within the applicable time periods specified in Rule 4(b)(7).

**(8) Withdrawal of Appeal.** If an appellant no longer desires to pursue an appeal after the notice of appeal is filed, counsel for the appellant must file with the clerk of the Supreme Court a notice of withdrawal of appeal. The notice of withdrawal of appeal must substantially comply with the Notice of Withdrawal of Appeal Form on the Nevada Supreme Court website.

**(c) Untimely Direct Appeal From a Judgment of Conviction and Sentence.**

**(1) When an Untimely Direct Appeal From a Judgment of Conviction and Sentence May Be Filed.** An untimely notice of appeal from a judgment of conviction and sentence may be filed only under the following circumstances:

(A) A postconviction petition for a writ of habeas corpus has been timely and properly filed in accordance with the provisions of NRS 34.720 to 34.830, asserting a viable claim that the petitioner was unlawfully deprived of the right to a timely direct appeal from a judgment of conviction and sentence; and

(B) The district court in which the petition is considered finds that the petitioner has established a valid appeal deprivation claim and is entitled to a direct appeal.

(C) In compliance with Rule 4(b)(7)(B), the district court must enter a written order containing:

(i) specific findings of fact and conclusions of law finding that the petitioner has established a valid appeal-deprivation claim and is entitled to a direct appeal with the assistance of appointed or retained appellate counsel;

(ii) if the petitioner is indigent, directions for the appointment of appellate counsel, other than counsel for the defense in the proceedings leading to the conviction, to represent the petitioner in the direct appeal from the conviction and sentence; and

(iii) directions to the district court clerk to prepare and file—within 7 days of the entry of the district court’s order—a notice of appeal from the judgment of conviction and sentence on the petitioner’s behalf in substantially the form provided in the Notice of Appeal Form on the Nevada Supreme Court website.

(D) If a federal court of competent jurisdiction issues a final order directing the state to provide a direct appeal to a federal habeas corpus petitioner, the petitioner or petitioner’s counsel must file the federal court order within 30 days of entry of the order in the district court in which petitioner’s criminal case was pending. The clerk of the district court must prepare and file—within 30 days of filing of the federal court order in the district court—a notice of appeal from the judgment of conviction and sentence on the petitioner’s behalf in substantially the form provided in the Notice of Appeal Form on the Nevada Supreme Court website.

**(2) Service by the District Court Clerk.** The district court clerk must serve certified copies of the district court's written order and the notice of appeal required by Rule 4(c) on the petitioner and petitioner's counsel in the postconviction proceeding, if any, the respondent, the Attorney General, the district attorney of the county in which the petitioner was convicted, the appellate counsel appointed to represent the petitioner in the direct appeal, if any, and the clerk of the Supreme Court.

**(3) Notice of Appeal Filed by Petitioner's Counsel or Petitioner.** If the district court has entered an order containing the findings required by Rule 4(c)(1)(C) and the district court clerk has not yet prepared and filed the notice of appeal on the petitioner's behalf, the petitioner or petitioner's counsel may file the notice of appeal from the judgment of conviction and sentence.

**(4) Motion to Dismiss Appeal.** The state may challenge a district court's written order granting an appeal-deprivation claim by filing a motion to dismiss the appeal with the clerk of the Supreme Court within 30 days after the date on which the appeal is docketed in the Supreme Court. The state's motion to dismiss must be properly supported with all documents relating to the district court proceeding that are necessary to the Supreme Court's or Court of Appeals' complete understanding of the matter.

**(5) Effect on Procedural Bars.** When a direct appeal of a criminal conviction and sentence is conducted under this Rule, the timeliness provisions governing any subsequent habeas corpus attack on the judgment begin to run upon the termination of the direct appeal, as provided in NRS 34.726(1) and NRS 34.800(2). A habeas corpus petition filed after a direct appeal conducted under this Rule must not be deemed a "second or successive petition" under NRS 34.810(2).

**(d) Appeal by an Inmate Confined in an Institution.** 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 delivered to a prison official for mailing on or before the last day for filing. If the institution has a notice-of-appeal log or another system designed for legal mail, the inmate must use that log or system to receive the benefit of this Rule.

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

**(f) Expediting Criminal Appeals.** The court may, with or without motion by the parties, by a majority of its members, make orders to expedite the handling of criminal appeals, including without limitation the following:

- (1) Elimination of steps in preparation of the record and the briefs.
- (2) Expediting preparation of stenographic transcripts.
- (3) Priority of calendaring for oral argument.
- (4) Utilization of court opinions or per curiam orders.
- (5) Other lawful measures reasonably calculated to expedite the appeal and promote justice.

### **REVIEWING NOTE**

Most of the amendments in subdivision (a), which deals with appeals in civil cases, are intended to be stylistic—making the Nevada rules largely consistent with federal rules governing the time for notices of appeal. The most significant rule change—subdivision(a)(6)—allows a district court to extend the time for an appeal. Under caselaw interpreting the former rule, the time for a notice of appeal was considered jurisdictional; neither district courts nor

appellate courts could extend the time limit. Under the new rule, the 30-day time limit for a notice of appeal remains the same. Except when the appeal period is set by statute, the new rule gives a district court discretion to extend the deadline if the appealing party files a motion for an extension not later than 30 days after expiration of the appeal time. Upon a showing of excusable neglect or good cause, a district court may extend the appeal time to a date up to 30 days after the appeal time expired, or 14 days after the date on which the extension motion is granted, whichever is later. No further extensions are allowed under the amended rule. This rule change is intended to provide relief from the strict consequences of the previous jurisdictional limitation, without creating an undue burden on the judiciary.

The proposed amendments to subdivision (b) are both stylistic and substantive. Subdivision (b)(1)(A) and (B) incorporate the structure of their analogous federal counterparts, allowing a party to file a notice of appeal within 30 days of the entry of the judgment or order being appealed or the filing of the opposing party's notice of appeal—whichever comes later. These amendments allow the prevailing party additional time to assess whether to cross-appeal.

Subdivision (b)(4) similarly incorporates the structure of its analogous federal counterpart, allowing a court to extend the time to file a notice of appeal for 30 days upon a showing of excusable neglect or good cause. However, unlike the federal rule, the Commission adopted language clarifying that appellate deadlines set by statute cannot be extended. This amendment promotes justice by allowing appellate review in certain circumstances where the appeal would otherwise be dismissed as untimely. Nevada courts should look to decisions interpreting the federal rule for guidance in interpreting Rule 4(b)(4).

Subdivision (b)(5) also incorporates the structure of its analogous federal counterpart.