

# When 60 days is too late!

Welcome to **Exceptionally Appealing**, a new monthly column devoted to exploring exceptions to general rules and procedures in appellate practice.



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## Attachments

- [Title 8. Appellate Rules](#)

## EXCEPTIONALLY APPEALING

Happy 2018! Welcome to Exceptionally Appealing, a new monthly column devoted to exploring exceptions to general rules and procedures in appellate practice. Since appeals generally begin with the notice of appeal, we'll start by looking and when the usual time to file that jurisdictional document is not what you think it is.

Most lawyers know that filing a timely notice of appeal is crucial because an untimely appeal is a dead appeal. And most lawyers have the notion in the back of their mind that they have 60 days to appeal from a California superior court judgment. The good lawyer knows that "judgments" include "appealable orders" and that the 60-days is triggered by service of a "notice of entry." The great lawyer knows that this 60-days can be triggered by notice by the court or any party (including the party who wishes to appeal), and that it can also be triggered by service of a file-stamped copy of the judgment or order showing the date of service. The smart lawyer further knows that absent any service, there is still always a backstop deadline of 180 days after entry of judgment. All of this comes from the "Time the Appeal" rule, Rule of Court 8.104(a) addressing the "Normal time" to appeal. But the Exceptional Lawyer knows all this and more.

The Exceptional Lawyer is attuned to magical words, such as "unless," and is drawn to abnormal situations like a moth to a flame. Rule 8.104(a)(1) begins "Unless a statute or rule 8.108, 8.702 or 8.712 provides otherwise ...." Ah, catnip!

What are the special enumerated exceptions arising from Rules 8.108, 8.702 and 8.712?

Rule 8.108, "Extending the time to appeal," addresses additional time to appeal if any party serves and files a valid posttrial motion, i.e., a notice of intention to move for a new trial, motion to vacate judgment, JNOV motion, or motion to reconsider an appealable order. Subdivision (f) also addresses extensions if a public entity defendant serves and files certain posttrial motions allowed under Government Code sections 962, 984, 985, regarding methods of satisfying a judgment.

Rule 8.702 concerns appeals in California Environmental Quality Act cases relating to certain specific projects: an "environmental leadership project" (Pub. Res. Code Sections 21182-21184); the "Sacramento arena project," (Pub. Res. Code Section 21168.6.6); and the "capitol building annex project" (Pub. Res. Code Section 21189.50). This rule reduces the time to appeal to a mere five days from notice of entry or service of a file-stamped

judgment. (CRC 8.702(b).) This rule also includes extensions of time to appeal after for motions for a new trial, to vacate a judgment, or to reconsider an appealable order -- but again the deadline is only five days. (CRC 8.702(c).)

Rule 8.712 addresses appeals in cases asserting claims under the Elder and Dependent Adult Civil Protection Act (Welf. & Inst. Code Section 15600 et seq.) and specifically appeals from a superior court order dismissing or denying a petition to compel arbitration. (Code Civ. Proc. Section 1294.4.) Rule 8.712(b) reduces to the time to appeal to 20 days. Subdivision (c) extends the time to appeal if a valid reconsideration motion is filed to five court days after the order denying the motion. Similarly, the time to cross-appeal is five court days. Note that this five-day period in the rules is expressly stated in court days. That's pretty unusual.

So much for the easy exceptions -- easy because they are expressly enumerated by rule number in Rule 8.104. What other landmines are buried out there?

Well, in a number of special sorts of cases, the time to appeal is halved to 30 days. For example, appeals from a judgment in an action contesting the validity of assessments under the Municipal Improvement Act of 1913 (St. & Hwy Code Section 10000 et seq.) must be filed "within 30 days after the entry of judgment." (St. & Hwy Code Section 10400.) Notice how the trigger is entry of judgment, not notice of entry. Exceptional, indeed.

The Streets & Highways Code also contains the Property and Business Improvement District Law of 1994 (Sts. & Hwy. Code Section 36600 et seq.), which requires that appeals challenging the validity of an assessment levied be "perfected within 30 days after the entry of judgment." (Sts. & Hwy. Code Section 36633.) Note again how the trigger is entry of judgment.

Similarly, in actions or proceedings to "attack, review, set aside, void or annul the levy of a special tax or an increase in a special tax" for the formation of a "community facilities district" under the Mello-Roos Community Facilities Act of 1982 (Gov. Code Section 53311 et seq.). "Any appeal from a final judgment in [such an] action or proceeding shall be perfected within 30 days after the entry of judgment." (Gov. Code Section 53341.) Yet again, the trigger is mere entry of judgment.

Another example of a 30-day time to appeal is in public agency validation proceedings. (Code Civ. Proc. Section 860 et seq.) Appeals must be filed "within 30 days after the notice of entry of judgment, or within 30 after the entry of judgment if there is no answering party." (CCP Section 870, subd. (b).) Of particular interest is how this statute begins: "Notwithstanding any other provision of law including, without limitation, Section 901 and any rule of court, no appeal shall be allowed" unless filed within the 30 days quoted above. This language is remarkable for three reasons. First, this language expressly removes resort to any Rule of Court that might extend the time to appeal, such as for posttrial motions. Second, relatedly, by saying "no appeal," this language ropes in cross-appeals as well. The good lawyer recalls that the time to cross-appeal is ordinarily extended to 20 days after the clerk's notice of notice of appeal. But that extension comes from Rule of Court 8.108(g)(1). The Exceptional Lawyer realizes that the statutory language precludes resort to any rule-based extension. This essentially means that there is no time for posttrial motions or cross-appeals. Anyone unhappy with such a judgment must appeal within 30 days, period. Third, this "no appeal" phrasing means that it applies to appeals from appealable orders in validation proceedings -- not just to final judgments.

These 30-day time periods still seems reasonable. After all, that's the standard in federal court (except for cases involving the federal government). Where things can get really dicey are even shorter periods. For instance, Under the Elections Code, an appeal from a judgment annulling or setting aside an election must be filed within 10 days after entry of judgment. (Elec. Code Section 16702.) And for a five-day time to appeal after notice of entry of an order, see Code of Civil Procedure Section 921, setting that tight deadline for one who wants to preserve an existing attachment pending appeal.

The Rutter guide calls these civil actions with special appeal periods "relatively obscure." Presumably lawyers

involved in one of these special types of cases are aware of the special appellate provisions. But there's a first time for everyone. And whenever a case involves a statutory scheme, it's important to read every line of every statute to make sure there's no trap waiting to be sprung.

As noted at the outset, filing a timely notice of appeal is jurisdictional, so knowing your filing deadline is essential. And knowing when to file means knowing when an exception applies to the typical general 60 days. Miss that exception -- which invariably shortens the time to appeal -- and you'll miss your appeal.

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