

# Chapman Client Alert

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Current Issues Relevant to Our Clients

## When Is a Deadline Really a Deadline? U.S. Supreme Court Clarifies the Distinction Between a Jurisdictional Appeal Filing Deadline and a Mandatory Claim Processing Rule

A federal circuit court is required to affirmatively determine whether it possesses jurisdiction over an appeal pursuant to statutory limitations set forth by Congress, as “[o]nly Congress may determine a lower federal court’s subject matter jurisdiction.”<sup>1</sup>

Among other rules, Federal Rule of Appellate Procedure 4(a)(5) authorizes a U.S. district court to extend the time for filing a notice of appeal in a civil case. Rule 4(a)(5) incorporates 28 U.S.C. § 2107(c), which provides for extensions of the notice of appeal deadline. However, Rule 4(a)(5)(C) goes a step further by specifically limiting the length of such extensions: “No extension...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.”

The question then is if an appellant files a notice of appeal beyond the 30-day period set forth in Rule 4(a)(5)(C), does a circuit court lack jurisdiction to hear the appeal? In *Hamer v. Neighborhood Housing Services of Chicago*, the U.S. Supreme Court answered that the filing of a notice of appeal beyond the deadline set forth in Rule 4(a)(5)(C) does not automatically divest a circuit court of jurisdiction over the case.

In *Hamer*, following entry of summary judgment in favor of the appellee, the U.S. District Court for the Northern District of Illinois inexplicably provided the appellant a lengthy (and unauthorized by rule) 60-day extension to file her notice of appeal — without objection by the appellee. When presented with the appeal, the Seventh Circuit concluded, *sua sponte*, that because Rule 4(a)(5)(C) imposes a “jurisdictional” time limit, it was required to dismiss the appeal.

The U.S. Supreme Court reversed, holding that the 30-day limit on extensions contained in Rule 4(a)(5)(C) for filing a notice of appeal does not automatically deprive a circuit court of jurisdiction to adjudicate the appeal because the rule is merely a “claim-processing” canon, rather than a “jurisdictional” limitation of the circuit court’s power. In analyzing prior case law discussing §2109(c), the Court found the Seventh Circuit had erroneously concluded it lacked jurisdiction over the case because the appellant’s notice of appeal was filed after the deadline set forth in Rule 4(a)(5)(C). The Court explained that because the deadline set forth in Rule 4(a)(5)(C) stems from a “court-made rule”, rather than a statute promulgated by Congress, it is the duty of the opposing party to object to the timeliness of the notice of appeal, and not an affirmative jurisdictional constraint on the circuit court.

Accordingly, because the appellant’s appeal was not automatically barred for consideration by the Seventh Circuit due to lack of jurisdiction, the Court remanded the case for further proceedings, noting that its decision did not address whether the appellee forfeited its right to challenge the District Court’s 60-day extension by failing to assert a timeliness objection.

*Hamer* thus provides that mandatory “court-made” deadlines, in contrast to statutes promulgated by Congress, will not divest a reviewing court of the ability to hear an appeal unless affirmatively raised by the opposing party, or else such objections to timeliness may be deemed forfeited or waived.

### For More Information

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If you would like further information concerning the matters discussed in this article, please contact any of the following attorneys or the Chapman attorney with whom you regularly work:

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1 *Kontrick v. Ryan*, 540 U.S. 443, 452 (2004) (citing U.S. Const., Art. III, §1).

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