

Beware the Appeal Deadline: Pending Motions and Entry of Final Judgment

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The Law Court's decision in [Fournier v. Flats Industrial, Inc.](#), issued last week, provides a stark reminder of the importance of attention to the deadlines for filing an appeal of a final judgment. The Law Court treats the deadline as jurisdictional, and requires "strict compliance"—even when, as in *Fournier*, the trial court may not have yet resolved all pending motions before entry of final judgment.

In *Fournier*, after the Superior Court granted a motion to dismiss two of three counts in the plaintiffs' complaint, the plaintiffs filed a stipulation voluntarily dismissing the final count together with a motion for a protective order to preserve the confidentiality of certain documents. The Superior Court granted the motion for protective order four days after the stipulation and motion were filed. Nineteen days later—importantly, more than 21 days after filing the stipulation of dismissal—the plaintiffs filed a notice of appeal relating to the two counts previously dismissed by the Superior Court.

Under these circumstances, the Law Court held that the appeal was not timely filed under Rule 2B, which requires a notice of appeal to be filed 21 days after entry of final judgment. A judgment is final when it "resolves all claims against all parties." The Court reasoned that the judgment in *Fournier* became final immediately upon entry of the stipulation of dismissal of plaintiffs' last claim, because stipulations of dismissal require no action by the Superior Court and are thus immediately effective.

It did not matter that the plaintiffs had also filed a motion for a protective order. The court concluded that (1) the stipulation was not conditioned upon the Superior Court's decision on the motion; (2) a motion for protective order is not among the enumerated motions in Rule 2B that toll the running of the appeal deadline—such as a motion for a new trial, or a motion to amend the judgment; and (3) the pending motion was collateral to the judgment, because it would not affect the judgment in any way. The pendency of that motion thus did not prevent the judgment from becoming final.

There are multiple ways that an appellant can protect itself when there is uncertainty as to the possible effect of a pending motion on the finality of a judgment.

- First, it is possible to file a notice of appeal based on the most conservative deadline, and then seek leave from the Law Court for the Superior Court to act on the pending motion under

Rule 3(d). Under Rule 3(c), there are some motions that do not even require leave of the Law Court for the Superior Court to resolve after a notice of appeal is filed. A notice of appeal filed under these circumstances preserves any issue arising from consideration of a post-judgment motion.

- Second, under Rule 2B, it is also possible to ask the Superior Court to extend the deadline for filing a notice of appeal by up to an additional 21 days.

Fournier drives home the point that an appellant is well advised to avail itself of these opportunities rather than run the risk that a notice of appeal will be deemed untimely.

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National Law Review, Volumess XIII, Number 213

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