

District of Columbia Court of Appeals

No. M-243-13

BEFORE: Washington, Chief Judge; Glickman, Fisher, Blackburne-Rigsby, Thompson, Oberly, Beckwith, Easterly, and McLeese, Associate Judges.

ORDER AND NOTICE OF PROPOSED RULEMAKING (SMALL CLAIMS)

The court having determined, pursuant to 28 U.S.C. § 2071(e), that there is an immediate need to amend Rule 6(a)(2) of the Rules of the District of Columbia Court of Appeals,

IT IS HEREBY ORDERED that D.C. App. R. 6(a)(2), which prescribes the time for filing an application for allowance of an appeal in a small claims matter, is amended, effective immediately, to provide as follows:

(2) The application must be filed within 3 days after entry of the judgment or order of a Superior Court judge. See D.C. Code § 17-307 (2012 Repl.); Super. Ct. Civ. R. 73(b). A judgment or order is deemed to be entered within the meaning of this subdivision when it is entered on the docket by the Clerk of the Superior Court. When a judgment or final order is signed or decided out of the presence of the parties and counsel, such judgment or order will not be considered as having been entered, for the purpose of calculating the time for filing an application for the allowance of an appeal, until the fifth day after the Clerk of the Superior Court has made an entry on the docket reflecting the mailing of notice. See Rule 26(a) (Computing Time). The application is deemed filed, for the purpose of determining whether it is timely, when the application is received by the Clerk of this court, not when it is mailed.

The need for this amendment arises from the following circumstances. D.C. Code § 17-307(b) (2012 Repl.) prescribes a three-day period for filing an

No. M-243-13

application for the allowance of an appeal in a small claims case. D.C. App. R. 6(a)(2) currently provides:

(2) The application must be filed within 3 days after entry of the judgment or order of a Superior Court judge, **as defined in Rule 4(a)(6)**. See D.C. Code § 17-307 (2001); Super. Ct. Civ. R. 73(b). The application is deemed filed, for the purpose of determining whether it is timely, when the application is received by the Clerk of this court, not when it is mailed.

In light of the court's recent decision in *Clark v. Bridges*, No. 12-CV-49 (D.C. Aug. 22, 2013), the cross-reference to D.C. App. R. 4(a)(6) may be interpreted to mean that a would-be appellant has only three days to file his application, even when the order is entered outside his presence and he learns of the order only by mail. The amendment is intended to restore the amount of time allowed prior to the decision in *Clark* by deleting the reference to Rule 4(a)(6) and substituting language adapted from D.C. App. R. 4(b)(5), which deals with appeals in criminal cases. The revised rule appears in the first indented paragraph above.

This NOTICE is published to afford interested parties an opportunity to submit written comments concerning this amendment and whether it should remain a part of the Rules of the District of Columbia Court of Appeals. Ten copies of any comments, addressed to the Clerk, District of Columbia Court of Appeals, 430 E Street, N.W., Suite 209, Washington, D.C. 20001, should be received by November 29, 2013.

FILED: September 27, 2013