COURTS, LAWYERS AND THE ADMINISTRATION OF JUSTICE SECTION

The District of Columbia Bar

BEFORE THE
DISTRICT OF COLUMBIA COURT OF APPEALS

COMMENTS OF THE SECTION ON COURTS, LAWYERS AND THE ADMINISTRATION OF JUSTICE OF THE DISTRICT OF COLUMBIA BAR REGARDING PROPOSED AMENDMENTS TO RULE 4(A)(2)

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SUMMARY OF COMMENT

The D.C. Court of Appeals has published for comment a proposed revision of Rule 4(a)(2) regarding appeals from remittiturs. The Section on Courts, Lawyers and the Administration of Justice generally supports the proposed amendments with suggested additions.

The amendment to Rule 4(a)(2) provides that the time for filing a notice of appeal shall run from the date on which a party files a statement with the court accepting a remittitur or the date on which a judgment based on the remittitur is entered, whichever is later. Since the prior language of Rule 4 permitted the noting of an appeal from the date on which a statement was filed with the court indicating rejection of a remittitur, it seemed to allow appeals from actions which were not final, because the consequence of rejecting a remittitur is the setting of a new trial. It is more appropriate, and consistent with the requirement that appeals be filed from final orders, that in cases where a remittitur is rejected, a party should not be allowed to file an appeal until after the new trial is completed.

While the acceptance of a remittitur has the effect of completing the action from which a party seeks to note an appeal, the Section notes, however, that, consistent with Superior Court Civil Rule 58, the time for noting an appeal should only run from the date on which a judgment based on the remittitur is entered.

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COMMENTS OF THE SECTION ON COURTS
LAWYERS, AND THE ADMINISTRATION OF JUSTICE
OF THE DISTRICT OF COLUMBIA BAR
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The D.C. Court of Appeals has published for comment a proposed revision of Rule 4(a)(2) regarding appeals from remittiturs. The Section on Courts, Lawyers, and the Administration of Justice of the D.C. Bar generally supports the amendments. The Section does, however, suggest the following further amendments to Rule 4(a)(2).

On May 21, 1984, the Court published the first comprehensive proposals to amend its rules. The proposed rule change to Rule 4(a) did not contain any language referencing appeals from remittiturs. Instead, the final rules issued on October 28, 1984, effective January 1, 1985, provided that the time for filing an appeal where a remittitur was ordered would run from the date the party files, in the Superior Court, a statement indicating acceptance or rejection of the remittitur. While this amendment to Rule 4(a)(2) was intended to remove doubt as to the date on which a party could appeal from an order granting a remittitur (see Howard University v. Kwadwo Pobbi-Asamani, 488 A.2d 1350, 1354, n.7 (D.C. 1985)), the Section does not believe that the amendment was consistent with other rules and, in fact, created additional uncertainties.

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or the date on which a judgment based on the remittitur is entered, whichever is later. Since the prior language of Rule 4 permitted the noting of an appeal from the date on which a statement was filed with the court indicating rejection of a remittitur it seemed to allow appeals from actions which were not final, because the consequence of rejecting a remittitur is the setting of a new trial. It is more appropriate, and consistent with the requirement that appeals be filed from final orders, that, in those cases where a remittitur is rejected, a party should not be allowed to file an appeal until after the new trial is completed.

While the acceptance of a remittitur has the effect of completing the action from which a party seeks to note an appeal, we suggest that, consistent with Superior Court Civil Rule 58, the time for noting an appeal should only run from the date on which a judgment based on the remittitur is entered. The Supreme Court has recognized that a party has a right to rely on Rule 58 in ascertaining the appropriate time to note an appeal. See United States v. Indrelunas, 411 U.S. 216 (1973). Rule 58 was designed to remove the uncertainty caused when courts combined opinions with apparently dispositive words. See Diamond By Diamond v. McKenzie, 770 F.2d 225, 230, n.10 (D.C. Cir. 1985). Rule 58 also rests control of the finality of judgments in the hands of the court and not individual parties. Thus, the Court should be encouraged to exercise its responsibilities in this

regard rather than leaving the date on which the time to appeal should run to the party which must decide for or against accepting the remittitur ordered by the court.

Our position in this respect is not inconsistent with the Supreme Court's decision in Bankers Trust Co. v. Mallis, 435 U.S. 381 (1978), wherein the Court recognized that if an action is truly final, the parties wishing to appeal can waive the separate document requirement of Rule 58. In such situations, however, the notice of appeal is filed from a court order and not some action taken by a party to the suit. In addition, by requiring the court to take some further action to acknowledge the acceptance of the remittitur and enter a judgment, collateral questions regarding the amount awarded and the inclusion of interest, costs or attorney fees could be avoided. The possibility that questions might arise regarding the nature of what has been accepted are likely given the inartful way some parties may respond, and have responded, to a court order granting a remittitur. Accordingly, consistent with Sup. Ct. Civ. R. 58 and the other provisions of D.C.C.A. Rule 4, the time for filing an appeal from an action in which a remittitur is granted should run from the date the court enters a judgment reflecting that the remittitur has been accepted.