

# Daily Journal

www.dailyjournal.com

TUESDAY, SEPTEMBER 26, 2017

## Filing deadlines and jurisdictional consequences

By Kenneth Trujillo-Jamison

**Hamer v. Neighborhood Housing Services of Chicago**  
Oral Argument: Oct. 10

On Oct. 10, the U.S. Supreme Court will hear oral argument in *Hamer v. Neighborhood Housing Services of Chicago*, a case involving a critical issue with high stakes for litigants: If a party files a notice of appeal within an extended time period set forth in a district court order, even if the length of the extension exceeds that permitted under the Federal Rules of Appellate Procedure, does the court of appeals have jurisdiction to consider the appeal?

In *Hamer*, Charmaine Hamer (the petitioner) was terminated from her job as an intake specialist for the Neighborhood Housing Services of Chicago and Fannie Mae's Mortgage Help Center (the respondents). After her termination, Hamer filed a complaint in federal district court alleging violations of the Age Discrimination in Employment Act and of Title VII of the Civil Rights Act of 1964. The district court granted summary judgment on the merits in favor of the defendants and entered final judgment on Sept. 14, 2015. Under Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure, Hamer had 30 days after entry of judgment to file her notice of appeal, making her deadline Oct. 14, 2015. On Oct. 8, 2015, six days prior to the filing deadline, Hamer filed a motion in the district court seeking a 60-day extension to the filing deadline. The district court



The U.S. Supreme Court in Washington, Sept. 1.

New York Times News Service

granted the motion and extended the deadline to Dec. 14, 2015. On Dec. 11, 2015 — within the court-approved 60-day extended period — Hamer filed her notice of appeal.

On appeal, the 7th U.S. Circuit Court of Appeals identified an issue not raised by the parties. Rule 4(a)(5)(C) provides that

**The basic rule is this: “when Congress does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as non-jurisdictional in character.”**

if a party files a timely motion for an extension of time to file a notice of appeal, “[n]o 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 district court’s order granting a 60-day extension obviously exceeded the maximum extension of 30 days permitted by Rule 4(a)(5)(C). The key question before the 7th Circuit was the consequence

of the district court’s error. The 7th Circuit held that even though the district court order had given Hamer 60 days in which to file her notice of appeal, and even though Hamer complied with that order by filing her notice of appeal within that period, it nonetheless lacked jurisdiction over the appeal because Rule

4(a)(5)(C) does not allow for an extension exceeding 30 days.

The Supreme Court has decided a string of cases concerning when a filing deadline should be treated as jurisdictional, meaning that the deadline cannot be extended under doctrines such as equitable tolling and that non-compliance cannot be waived or forfeited. *See, e.g., United States v. Kwai Fun Wong*, 135 S. Ct. 1625 (2015); *Sebelius v. Auburn Regional Medical Center*, 133

S. Ct. 817 (2013); *Henderson v. Shinseki*, 562 U.S. 428 (2011); *Bowles v. Russell*, 551 U.S. 205 (2007); *Kontrick v. Ryan*, 540 U.S. 443 (2004). The basic rule is this: “when Congress does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as non-jurisdictional in character.” *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 516 (2006). The court has also stated that filing deadlines are “quintessential claim-processing rules,” meaning that unless Congress clearly states otherwise, such rules should be regarded as non-jurisdictional. *Kwai Fun Wong*, 135 S. Ct. at 1632.

The key Supreme Court case presenting an issue most similar to the one presented by *Hamer* is *Bowles v. Russell*. In that case, the petitioner filed a motion under Rule 4(a)(6) of the Federal Rules of Appellate Procedure to reopen the period during which he could file a notice of appeal. Rule 4(a)(6) permits district courts to extend the filing period for 14 days, but the district court inexplicably granted the petitioner a 17-day extension. The court held that Rule 4(a)(6)’s 14-day cap on an extension of the notice-of-appeal filing period was jurisdictional because that 14-day cap was created by statute. 28 U.S.C. Section 2107(c) (“the district court may ... reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.”). As the court noted, “[b]ecause Congress specifically limited the amount of time by which district courts can extend the notice-of-appeal period in § 2107(c), that limitation is more

than a simple ‘claim-processing rule.’” *Bowles*, 551 U.S. at 213.

The key difference between Rule 4(a)(6), the rule at issue in *Bowles*, and Rule 4(a)(5)(C), the rule at issue in *Hamer*, is that Section 2107(c) does not provide for a maximum extension to

Congress did not clearly provide that the maximum extension to the notice-of-appeal filing period referenced in Rule 4(a)(5)(C) is 30 days. “Because Congress [did not] specifically limit[] the amount of time” for an extension under Rule 4(a)(5)(C), the court

---

**It would be curious for the Supreme Court to hold that the consequence of her dutiful compliance with that order should be the dismissal of her appeal.**

---

the filing deadline under the latter rule. *Id.* (“The district court may, upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal, extend the time for appeal upon a showing of excusable neglect or good cause.”). In other words,

should therefore reverse the 7th Circuit and hold that Rule 4(a)(5)(C) is not jurisdictional. *See Bowles*, 551 U.S. at 213.

Not only would reversing the 7th Circuit be consistent with the principle that filing deadlines are to be treated as non-jurisdictional absent a clear congressional

statement to the contrary, *see, e.g., Kwai Fun Wong*, 135 S. Ct. at 1632, such a holding would seem to be the most reasonable outcome for this particular case as well. *Hamer* — who was proceeding pro se when she filed her notice of appeal — complied with an apparently valid district court order by filing her notice of appeal within 60 days of the original filing date. It would be curious for the Supreme Court to hold that the consequence of her dutiful compliance with that order should be the dismissal of her appeal. As one justice (joined by three colleagues) observed, “[i]t is intolerable for the judicial system to treat people this way.” *Bowles*, 551 U.S. at 215 (Souter, J., dissenting).

**Kenneth Trujillo-Jamison** is a litigator with *Munger, Tolles & Olson LLP*. His practice is focused on complex civil litigation, with experience in securities litigation, white collar criminal defense, internal investigations and general commercial disputes. He can be reached at *Kenneth.Trujillo-Jamison@mto.com*.

