

DATE APPEAL DEADLINE STARTS TO RUN
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According to Rule 8002(a) of the Federal Rules of Bankruptcy Procedure, a notice of appeal “shall be filed with the clerk within 14 days of the date of the entry of the judgment, order, or decree appealed from.”¹ Rule 9021, titled “Entry of Judgment,” states that “[a] judgment or order is effective when entered under Rule 5003.”² In turn, Rule 5003(a) explains that the clerk must keep a docket in each case and “enter thereon each judgment, order, and activity in that case.”³ Rule 5003(a) further explains that every judgment or order docket entry must “show the date the entry is made.”⁴

Against this backdrop, federal courts have determined uniformly that “entry of the judgment, order, or decree” occurs on the date the clerk records that document on the docket.⁵ In a widely-cited case, *In re Henry Bros. Partnership*,⁶ the Bankruptcy Appellate Panel for the U.S. Court of Appeals for the Eighth Circuit explained the issue this way:

A document is *signed* when a signature is affixed by the judge or clerk. The date of signing has little, if any, meaning under either the Federal Rules of Bankruptcy Procedure or the Federal Rules of Civil Procedure. The signing of the order or judgment by the judge does not constitute an “entry” by the judge.

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A document is *entered* when the clerk makes the notation on the official public record, the docket, of the activity or submission of the particular document.⁷

¹ In 2009, the Supreme Court amended Rule 8002 to allow for a 14-day period for filing a notice of appeal. Supreme Court of the United States, Order Amending Federal Rules of Bankruptcy Procedure (Mar. 26, 2009). Prior to that, Rule 8002 provided only a 10-day period. Due to their dates of decision, all but one of the cases cited below are based upon the pre-amendment 10-day period. Because the length of the period has no bearing on the event which triggers the running of the period, the amendment to Rule 8002 has no real impact here.

² Fed. R. Bankr. P. 9021.

³ Fed. R. Bankr. P. 5003(a).

⁴ Fed. R. Bankr. P. 5003(a).

⁵ *Faragalla v. Access Receivable Mgmt. (In re Faragalla)*, 422 F.3d 1208, 1210 (10th Cir. 2005) (“A document is *entered* when the clerk makes the notation on the official public record, the docket, of the activity or submission of the particular document.”) (emphasis original) (quoting *United States v. Henry Bros. P’ship (In re Henry Bros. P’ship)*, 214 B.R. 192, 195 (B.A.P. 8th Cir. 1997)); *Solomon v. Smith (In re Moody)*, 41 F.3d 1024, 1027 (5th Cir. 1995) (“Entering judgments of the bankruptcy court is a duty of the clerk.”); *Delaney v. Alexander (In re Delaney)*, 29 F.3d 516, 518 (9th Cir. 1994) (“Here, the bankruptcy court’s order was signed on December 7, 1992 and entered on December 14, 1992. Thus, Alexander had 10 days from December 14, 1992, the date of entry, in which to file her notice of appeal.”); *Stelpflug v. Fed. Land Bank of St. Paul*, 790 F.2d 47, 50 (7th Cir. 1986) (“[T]he day an order is signed is not necessarily the day the appeal time begins to run. A judge may sign an order and then instruct the clerk to delay the entry of judgment. By deferring entry of judgment, the judge effectively extends the period during which a timely appeal may be filed.”) (internal citations omitted).

⁶ *United States v. Henry Brothers P’ship (In re Henry Bros. P’ship)*, 214 B.R. 192 (B.A.P. 8th Cir. 1997).

⁷ *Id.* at 195 (emphasis in original).

The U.S. Court of Appeals for the Eleventh Circuit considered this issue in *In re Williams*.⁸ In that case, the Bankruptcy Court for the Middle District of Florida denied Williams’s motion for rehearing or reconsideration—the subject of the eventual appeal—on May 21, 1999.⁹ The order was entered on the docket on the same date.¹⁰ Williams then filed a notice of appeal of that order on June 7, 1999—seventeen days after the order appeared on the docket.¹¹ Accordingly, the bankruptcy court dismissed the filing as untimely, and the district court later affirmed that decision.¹² Williams appealed once more, and a unanimous Eleventh Circuit panel agreed with the lower courts:

Rule 8002(a) of the Federal Rules of Bankruptcy Procedure provides that a notice of appeal must be filed “within [14] days of the date of the entry of the judgment, order, or decree appealed from.” The bankruptcy court’s order denying Williams’s motion for rehearing or reconsideration was entered on the docket on May 21, 1999. Williams filed his notice of appeal on June 7th, seventeen days later. Thus, his notice of appeal was untimely.¹³

In *In re Pacific Forest Products Corp.*,¹⁴ the U.S. District Court for the South District of Florida confronted this issue. Citing both *In re Henry Bros. Partnership* and *In re Williams*, the court explained that “an order is *entered* when it appears on the clerk’s docket.”¹⁵ To be clear, it does not appear that even one federal court has reached a contrary decision.

⁸ *Williams v. EMC Mortgage Corp. (In re Williams)*, 216 F.3d 1295 (11th Cir. 2000).

⁹ *Id.* at 1296.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 1296-97 (alteration added to reflect the change to Rule 8002(a)).

¹⁴ *Colonial Bank v. Freeman (In re Pac. Forest Prods. Corp.)*, 335 B.R. 910 (S.D. Fla. 2005).

¹⁵ *Id.* at 916 (emphasis in original).