

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: COUNCIL	:	CIVIL ACTION
	:	
	:	
	:	NO. 06-1537
	:	

MEMORANDUM

On March 6, 2006, an Order was signed by the Honorable Diane W. Sigmund of the United States Bankruptcy Court for the Eastern District of Pennsylvania after a hearing on a Motion to Reconsider filed by Arthur Council, the Appellant herein. Appellant filed his notice of appeal on March 17, 2006. Presently before the Court is Appellees' Motion to Quash the Appeal (Doc. No. 9) based on an assertion of untimeliness. The Court held oral argument on June 13, 2006 and has allowed the parties to file numerous supplemental memoranda.

Pursuant to Fed. R. Bankr. P. 8002(a), a notice of appeal must be filed within ten (10) days of the date "of the entry of the judgment, order, or decree" appealed from. The ten day mandate of Rule 8002(a) has been strictly construed. See, e.g., In re: Daniels, 2002 U.S. Dist. LEXIS 9933, *7 (M.D. Pa. 2002). Fed. R. Bankr. P. 9006(a) states that in computing any period of time prescribed or allowed by the Bankruptcy Rules, the day of the act, event, or default from which the designated time period begins to run shall not be included.

Judge Sigmund signed and dated her Order on March 6, 2006. See Exhibit A to Appellees' Motion to Quash (Order bearing signature of Judge Sigmund accompanied by a legible, handwritten date of "3/6/06"). The Clerk's Docket shows the "filing date" of the Order at March 6, 2006, and states that the order was "entered" on March 7, 2006. See Exhibit A to

Appellant's July 3, 2006 Letter Brief. Appellant filed his notice of appeal on March 17, 2006. See Exhibit B to Appellees' Motion to Quash.

In their motion, Defendants assert that the trigger for the ten day period proscribed by Rule 8002(a) was Judge Sigmund's signing and dating of the Order on March 6, 2006. Based on that date, Defendants contend that, by application of Rules 8002(a) and 9006(a), the first day of the ten day period during which Appellant could timely file his notice of appeal was March 7, 2006, and the tenth day was March 16, 2006.

In response, Appellant contends that the trigger for the ten day period was not the signing of the Order by Judge Sigmund on March 6, 2006, but, rather, the entry of the Order on the docket by the Clerk on March 7, 2006. Based on that date, Appellant argues that, by application of Rules 8002(a) and 9006(a), the first day of the ten day period during which Appellant could timely file his notice of appeal was March 8, 2006, and the tenth day was March 17, 2006.

There is no doubt that Appellant is correct. To clarify the proper understanding of the date of "entry" of an Order, the Court looks to the jurisprudence of multiple Courts of Appeals concerning appeals of District Court orders.¹ It is clear from such caselaw that time for the purposes of appellate filings begins to run not from the date an order is signed by a judge, nor from the date that an order is "filed" (i.e., received by the Clerk's office), but, rather, from the date that an Order is "entered" onto the public docket by the Clerk's office. In United States v. Fiorelli, 337 F.3d 282, 287-89 (3d Cir. 2003), the Court of Appeals for the Third Circuit faced a

¹ The Court finds absolutely nothing in the law to suggest why appeals from "entered" District Court orders should receive any different treatment than appeals from "entered" Bankruptcy Court orders. To the contrary, the relevant guidelines for each refer clearly to the date of "entry" as the trigger for time limitations concerning appeals. Indeed, this general principle is applied across the federal courts. See, e.g., Fed. R. App. 4(a)(1)(A) (civil cases); id. 4(b)(1)(A) (criminal cases, unless the Government files a notice of appeal); Sup. Ct. R. 13(1) (petition to Supreme Court seeking writ of certiorari).

situation in which an appealed-from order had been dated May 16, 2001, stamped as received by the Clerk's office on May 17, 2001, but not "entered" as stated on the docket sheet prepared by the Clerk's office until May 18, 2001. The Court explicitly held: "[E]ntry is the formal act of adding the judgment or order to the clerk's docket, and . . . the date of entry must be memorialized by a separate notation. Thus, although an order may be signed by the district court, received by the clerk, and entered into the docket on different days, the entry date controls." *Id.* at 287 (emphasis added). Other Courts of Appeals are in accord with this principle. *See, e.g., Connecticut ex rel. Blumenthal v. Crotty*, 346 F.3d 84, 92 n.12 (2d Cir. 2003) ("Although the date stamp on the district court's order indicates that it was "filed" on February 2, 2001, and although the order itself notes that it is "dated the 2nd day of February 2001", the date that we construe as memorializing the date on which judgment was entered and executed is the date on which judgment was entered on the docket of the district court."); *Muniz v. United States*, 236 F.3d 122, 124 (2d Cir. 2001) (noting that the relevant date is when a judgment or order is entered on the docket); *Houston v. Grenier*, 174 F.3d 287, 288 (2d Cir. 1999) (distinguishing among signature, filing, and entry dates; explaining that "entry of judgment . . . is the act of recording in a docket maintained by the clerk of a court the fact that a judgment has been rendered;" and holding that the entry date controls); *Osborn v. United Food and Comm. Workers Union, Local No. 881*, 305 F.3d 763, 769-770 (7th Cir. 2002) (explaining how the Plaintiff had "confuse[d] the date that the district court filed its judgment with the date that it entered judgment," differentiating between the two dates, and noting that "the entry date controls" for purposes of time computations) (emphasis in original)); *Weedon v. Gaden*, 136 U.S. App. D.C. 1, 8 (D.C. Cir. 1969) ("A judgment must first be rendered, that is, the court's adjudication must be pronounced. . . . Customarily, the written document is then filed by delivery to the clerk for

custodial purposes. Lastly, the judgment is entered by a notation in the civil docket. Rendition of judgment, the judicial act, is of course for the court; its filing and entry are ministerial activities to be handled by the clerk.”); see generally Michael Zachary, Appellate Jurisdiction and the Separate Judgment and Docket Entry Requirements, 40 N.Y.L. Sch. L. Rev. 409 (1996).²

Here, the Court finds that (1) Judge Sigmund signed the relevant Order on March 6, 2006, (2) the Order was received by the Clerks office on March 6, 2006, and, as such, the docket

² In Houston, the Second Circuit described the reasons behind this principle in great and useful detail:

The time for filing a notice of appeal from a final judgment or order runs from the date the judgment or order "is entered." The "entry" date is not necessarily the same date that the judgment is dated, i.e., signed by the judge or court clerk, nor the same date that it is filed, i.e., date- and time-stamped as officially received by the clerk's office, thereby then formally becoming part of the clerk's office file.

The entry date also starts the ten-day period for filing various motions, see, e.g., Fed. R. Civ. P. 50(b) (motion for judgment as a matter of law); Rule 52(b) (motion to amend findings); Rule 59(b) (motion for new trial); Rule 59(e) (motion to alter or amend judgment), and other procedurally significant time periods, see, e.g., Rule 54(d)(2)(B) (14 days for motion for attorney's fees); Rule 60(b) (a "reasonable time" not exceeding one year for relief from judgment because of mistake, inadvertence, excusable neglect, newly discovered evidence, or fraud).

Every docket entry shows, in the left-hand column of the docket sheet, the date that the document being entered on the docket was filed. The docket entry then states the general nature of the document being entered, including, in the case of a judgment, the "substance" of the judgment. Some, but not all, docket entries include a notation that explicitly shows the date the document was entered. This appears as a bracketed phrase, for example, "[Entry date 04/01/99]" or "[EOD 4/1/99]."

...

[I]f the clerk is docketing a document one or more days after that document was filed, the clerk corrects the date that the computer displays and inputs the earlier filing date. The filing date . . . will appear in the left-hand column of the printed docket sheet, preceding the particular docket entry. In those instances where the clerk has corrected the filing date to reflect that the document was filed one or more days before the docket entry is made, the program automatically generates a notation in the form, for example, "[Entry date 04/02/99]" to indicate the date on which the entry is being made.

Houston, 174 F.3d at 288-89 (citations omitted).

reflects a “filing” date of March 6, 2006, and (3) the Clerk’s office entered (i.e., officially recorded) the Order and made it part of the public docket on March 7, 2006 and, as such, the docket reflects an “entry” date of March 7, 2006. According to the well-established principles described above, the entry date controls for purposes of beginning the ten-day time period during which Mr. Council could timely file a notice of appeal. Therefore, under Rules 8002(a) and 9006(a), the first day Mr. Council could timely file his notice of appeal was March 8, 2006, and the tenth day was March 17, 2006. Mr. Council filed his appeal on March 17, 2006. His appeal was therefore timely.

The Court notes that the fundamental premise of Appellees’ Motion to Quash is that the relevant Order was “entered” on March 6, 2006. Based on the Court’s discussion, supra, it appears that Defendants’ position is directly at odds with both analogous Third Circuit precedent and extensive persuasive authority from other Circuits. Appellees, however, did not refer to any of the caselaw cited by the Court (including the Third Circuit’s decision in Fiorelli) in any of their briefing or oral argument.

Appellant’s counsel entered his appearance in this case on June 13, 2006. After coming up to speed on the case, Appellant’s counsel explicitly brought this dispositive issue to the Court’s attention on July 3, 2006. On that day, Appellant’s counsel submitted a letter brief in which he contended that the Motion to Quash was “frivolous,” and in which he asserted, correctly, that “[t]he Clerk’s Docket shows that the Bankruptcy Court’s Order of March 6, 2006, was not entered in the record until March 7, 2006.” See Appellant’s July 3, 2006 Letter Brief at 1. However, after being subsequently asked by the Court to respond to another issue raised by Appellant’s counsel, Appellees, despite the existence of the above-discussed caselaw and the correct argument of Appellant’s counsel, once again re-stated the position that “Judge Sigmund

entered an Order denying reconsideration on March 6, 2006.” See Appellees’ July 11, 2006 Letter Brief at 1. In response, Appellant’s counsel once again submitted a letter brief in which he – again, correctly – asserted that “in the case sub judice, the Bankruptcy Court ‘issued its Order’ appeal [sic] on March 6, 2006, and the Clerk entered the Order on the Docket on the next day, March 7, 2006. . . . The time for filing a notice of appeal is computed beginning with the date on which an entry is made on the Court Docket.” See Appellant’s July 12 Letter Brief at 1.

As discussed above, Appellant is clearly correct. Although the Court does not take a position on whether Appellees were required to disclose Fiorelli to the Court as adverse authority, the Court finds it highly unfortunate that resources were devoted to extended motion practice concerning a question to which the answer becomes immediately clear upon a brief review of relevant precedent.

Accordingly, the Court will deny Defendants’ Motion to Quash. Furthermore, for the reasons explained above and in its discretion, the Court will order Appellees to pay Appellant’s reasonable attorney’s fees and costs incurred in defending against this motion.

An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: COUNCIL

: CIVIL ACTION
:
:
: NO. 06-1537
:
:

AND NOW, this 21st day of July, 2006, after oral argument and careful review of the record and parties' briefs, it is hereby ORDERED that Appellee's Motion to Quash the Appeal (Doc. No. 9) is DENIED. Appellees shall pay Appellant's reasonable attorney's fees and costs incurred in defending against this motion. Appellant shall submit a statement of these expenses to the Court for review within ten (10) days.

BY THE COURT:

/s/ MICHAEL M. BAYLSON

Michael M. Baylson, U.S.D.J.