

## WHEN A DEADLINE ISN'T A DEADLINE: FIFTH CIRCUIT RULES FCA APPEAL DEADLINES TURN ON GOVERNMENT'S INTERVENTION

Joining the other circuit courts, the Fifth Circuit extends the time to appeal a civil case if the United States was a party. As long as the United States was actively involved in the case prior to the appeal, any party has 60 days to appeal.

### BACKGROUND

In *United States v. Ronald Conner*, [1] after twice failing to comply with a summons in an FCA action, the district court found Conner in contempt. Conner appealed the contempt orders, but the Fifth Circuit dismissed his appeal because it was filed after the normal 30-day deadline for civil appeals. But Conner sought a rehearing *en banc*—arguing that because the United States was a party to the action, the extended 60-day time frame applied, and under that standard, his appeal was timely. Although, the United States did not have an interest in the outcome of the contempt appeal, Conner argued that the United States' presence as a party in the case is the determining factor for a timely appeal.

### ANALYSIS

On appeal, the Fifth Circuit agreed with Conner and joined other circuits by holding that the United States' presence as a party makes any appeal deadline for any party 60 days—even if the United States has no direct interest in the appeal. Only once the United States withdraws or is dismissed from an action does the 60-day deadline revert to the standard 30-day deadline.

The Fifth Circuit explained that this ruling would not apply to an FCA action if the United States declined intervention. There—though the United States remains a party in interest even when permits a private whistleblower to pursue the action on its behalf—it is not party to the case for purposes of extending the appeal deadline.

### PRACTICAL TAKEAWAYS

In FCA actions filed by whistleblowers, which deadline applies depends upon the Government's decision on whether to intervene. If the United States declines intervention, the 30-day deadline applies; if it intervenes, the 60-day deadline applies.

Appellate deadlines can seem archaic and hyper-technical. But—in the context of FCA litigation—they serve as a reminder that the complexity of FCA actions requires experienced counsel.

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[1] *United States v. Ronald Conner*, No. 17-11417 (5th Cir. Oct. 22, 2018)(en banc).