

Appellate Law

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# A Shortcut to Appeal for Civil Cases Pending in Pa. State Court

Howard J. Bashman  
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Howard Bashman

### Upon Further Review

Once a civil case has been decided at trial, it is often necessary for the losing party to file post-trial motions in order to preserve issues for appeal. If the civil case has been tried in federal court, ordinarily a judgment would be entered on the verdict almost immediately after the verdict is returned. By contrast, if the civil case has been tried in state court, judgment will not be entered until after any timely filed post-trial motions have been resolved.

This difference between federal court and the Pennsylvania state court system concerning when a civil case results in a judgment can have real world

consequences when the jury's verdict has awarded damages in favor of the plaintiff. The entry of a judgment in both judicial systems starts the clock ticking on when that judgment will be subject to execution proceedings and also necessitates the defendant's posting of a supersedeas bond if the defendant wishes to avoid collection of the judgment while the case remains subject to further judicial review.

In both the federal judicial system and the Pennsylvania state court system, the appellate process does not and cannot begin until any and all timely filed post-trial motions have been resolved. But the Pennsylvania Rules of Civil Procedure provide an option, unavailable in the federal system, for expediting the case toward the appellate stage if the trial judge is taking too long to decide the post-trial motions.

This option, found in Pennsylvania Rule of Civil Procedure 227.4(1)(b), allows any party to obtain the immediate entry of judgment simply by asking for it from the trial court's prothonotary once any post-trial motion has been pending before the trial court, undecided, for 120 days or more. The entry of judgment in this manner is not only automatic in cases where the rule applies, but it also immediately strips the trial court of any further ability to grant the post-trial relief that was the subject of those post-trial motions. The entry of judgment in this manner also begins the start of the 30-day period for appeal under Pennsylvania law and requires the defendant to post an appropriate bond or other security in order to avoid execution on the judgment while the appeal proceeds.

No similar option to expedite the appellate process exists in civil cases pending in the federal system. Rather, federal district judges can take as long as is necessary to decide post-judgment motions that have been filed in a civil case, and the parties and their attorneys can do little more than hope that a decision will issue sooner rather than later.

There is one noteworthy exception to the option that exists under Pennsylvania Rule of Civil Procedure 227.4(1)(b) to enter judgment when a trial court has taken longer than 120 days to decide post-trial motions. Under Rule 238 of the Pennsylvania Rules of Civil Procedure, a plaintiff who has won an award of compensatory damages in a case seeking relief for bodily injury, death or property damage can also seek "delay damages," which are a form of pre-verdict interest. In a case where delay damages can be obtained, the plaintiff must file a motion seeking them within 10 days after the verdict.

In a case where the plaintiff has won a verdict that would permit the addition of delay damages, it is common that the defendant will file post-trial motions to preserve issues for appeal, and the plaintiff will file a post-verdict motion asking for the addition of delay damages. Pennsylvania Rule of Civil Procedure 238(c)(3)(i) states that when a case

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is in this particular procedural posture, no party can obtain the immediate entry of judgment simply by requesting it, even if the trial court has taken longer than 120 days to decide the post-trial motions, if a motion for delay damages remains pending and unresolved.

But, even in this procedural posture, there may still be a way to expedite appellate review. Pennsylvania Rule of Civil Procedure 238(c)(2) states that if the defendant has not filed any opposition to plaintiff's delay damages motion, the trial court's prothonotary can grant the delay damages motion as unopposed on plaintiff's request after the time for filing a response in opposition has expired. Once the delay damages motion is granted as unopposed, no delay damages motion remains pending, and the option to enter final judgment on a party's request after a post-trial motion has been pending for 120 days or more becomes available.

The portions of Rule 238 that I have discussed above may give a defendant that wishes to postpone as long as possible a plaintiff's ability to recover on a judgment the incentive to file insubstantial objections to a plaintiff's motion for delay damages. In such a situation, the plaintiff should urge the trial court to resolve the plaintiff's entitlement to delay damages as quickly as possible, even before deciding the defendant's post-trial motions, so as to empower the plaintiff to move the case to the appellate level if the trial court ends up taking more than 120 days to decide the defendant's post-trial motions.

When and if it makes sense to eliminate a Pennsylvania state trial court's ability to grant post-trial motions that have been filed in a civil case because of the mere passage of time is a question that can only be answered on a case-by-case basis. But the availability, or potential availability, of this option, which is unavailable in civil cases that are pending in federal court, is definitely worth keeping in mind in civil cases pending in the Pennsylvania state court system where a trial court has taken more than 120 days to decide the post-trial motions. •

Howard J. Bashman *operates his own appellate litigation boutique in Willow Grove, Pa., and can be reached by telephone at 215-830-1458 and via e-mail at [hjb@hjbashman.com](mailto:hjb@hjbashman.com). You can access his appellate blog at <http://howappealing.law.com>.*

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