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Moore's Federal Practice®

Publication 410

Release 226

June 2025

HIGHLIGHTS

Analysis of Latest Case Law—Civil and Appellate^o

- This release features analysis of the latest case law pertaining to federal civil and appellate practice. See Volumes 1–23.

Release 226 of *Moore's Federal Practice* features analysis of the latest caselaw and other developments pertaining to federal civil and appellate practice, including the following:

Costs of Suit. The Ninth Circuit, in

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Casun Inv., A.G. v. Ponder, 119 F.4th 637 (9th Cir. 2024) (per curiam), ruled that in a diversity action, the award of costs incident to judgment on a state-law claim is a procedural issue governed exclusively by Civil Rule 54(d) and 28 U.S.C. § 1920; under those provisions, any award is discretionary, so the district court erred in taxing costs based on a Nevada state law that mandated an award to the prevailing party. *See* Ch. 1, *Scope and Purpose*, § 1.05[2]; Ch. 54, *Judgment; Costs*, § 54.103[2].

Trademark Infringement. In *Dewberry Grp., Inc. v. Dewberry Eng'rs Inc.*, 604 U.S. —, 145 S. Ct. 681, 221 L. Ed. 2d 156, 2025 U.S. LEXIS 867 (Feb. 26, 2025), the Supreme Court held that 15 U.S.C. § 1117(a), which authorizes trademark-infringement damages consisting of the “defendant’s profits,” refers to the named defendant or defendants only, so the lower courts

erred in ordering disgorgement of the profits of additional nonparty affiliated entities on the ground that all the companies constituted a “single corporate entity.” See Ch. 2, *One Form of Action*, § 2.02[3].

Pro Se Filing. In *Folse v. Hoffman*, 122 F.4th 80 (4th Cir. 2024), the Fourth Circuit held that the filing rules of Civil Rule 5(d) apply to the initial filing of the complaint under Rule 3, so e-filing of a complaint by a pro se plaintiff is not available unless authorized by a local rule or court order; moreover, any violation of the rule may result in dismissal without prejudice. See Ch. 3, *Commencing an Action*, § 3.04[2]; Ch. 5, *Serving and Filing Pleadings and Other Papers*, § 5.31[3].

E-Filing. The Seventh Circuit, in *Dent v. Charles Schwab & Co.*, 121 F.4th 1352 (7th Cir. 2024) (per curiam), held that an attorney who e-files a complaint on behalf of a client is responsible for understanding how the court’s CM/ECF system works and properly completing the e-filing process, so merely *initiating* the process within the limitations period is not sufficient unless it is *completed* before the period expires. See Ch. 3, *Commencing an Action*, § 3.04[2]; Ch. 5, *Serving and Filing Pleadings and Other Papers*, § 5.31[3].

Prison Litigation Reform Act—Three Strikes. The Sixth Circuit, in *Crump v. Blue*, 121 F.4th 1108 (6th Cir. 2024), ruled that a district court’s dismissal of a prisoner’s entire action due to a discretionary refusal to ex-

ercise supplemental jurisdiction over a state-law claim does not count as one of three “strikes” that, under the Prison Litigation Reform Act, would bar the prisoner from proceeding in forma pauperis in future cases. See Ch. 4, *Summons*, § 4.40[2][b].

Prison Litigation Reform Act—Imminent Danger. In *Owlfeather-Gorbey v. Avery*, 119 F.4th 78 (D.C. Cir. 2024), the D.C. Circuit held that in determining whether in forma pauperis status is available on appeal due to the imminent-danger exception to the three-strikes rule of the Prison Litigation Reform Act, the danger must exist at the time the notice of appeal is filed, and when the “prison mailbox” rule applies, all events after delivery of the notice of appeal to prison authorities are disregarded. See Ch. 4, *Summons*, § 4.40[2][b].

Extension of Time. In *U.S. Bank Tr. Nat’l Ass’n v. Walden*, 124 F.4th 314 (5th Cir. 2024), the Fifth Circuit held that when the 14-day period to object to a magistrate judge’s decision had already been extended based on an unopposed motion, the district court did not abuse its discretion in denying a motion for a second extension filed after expiration of the first extension, because the failure to make a timely objection was completely in the party’s control. See Ch. 6, *Computing and Extending Time; Time for Motion Papers*, § 6.06[3].

Rule 11 Sanctions. In *Eberhardt v. Walsh*, 122 F.4th 681 (7th Cir. 2024), the Seventh Circuit held that due process does not require a hearing on a motion for sanctions under Civil

Rule 11 when the sanctionable conduct is apparent from the existing record, because a hearing would not assist the court in deciding the motion. *See* Ch. 11, *Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions*, § 11.23[4].

Discovery Sanctions. The Ninth Circuit, in *Gregory v. Montana*, 118 F.4th 1069 (9th Cir. 2024), held that invoking inherent powers to impose an adverse-inference sanction for spoliation of electronically stored information was error, because Civil Rule 37(e)(2) exclusively governs the available sanctions, and the required “intent to deprive” standard of that rule was not met; the court may not invoke inherent powers in order to contravene the clear mandate of an applicable statute or rule. *See* Ch. 11, *Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions*, § 11.23[4]; Ch. 26, *Duty to Disclose; General Provisions Governing Discovery*, § 26.06[2]; Ch. 37, *Failure to Make Disclosures or to Cooperate in Discovery; Sanctions*, § 37.121A.

Review of Agency Action. The Supreme Court, in *Bouarfa v. Mayorkas*, 604 U.S. 6, 145 S. Ct. 24, 220 L. Ed. 2d 245 (2024), held that the presumption that agency action is subject to judicial review may be overcome by a “jurisdiction-stripping” statute that both commits the action to the agency’s discretion and bars judicial review. *See* Ch. 12, *Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing*, § 12.30[1].

ment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing, § 12.30[1].

Foreign Sovereign Immunities Act. In *Republic of Hungary v. Simon*, 604 U.S. —, 145 S. Ct. 480, 221 L. Ed. 2d 1 (2025), the Supreme Court held that the Foreign Sovereign Immunities Act’s expropriation exception to foreign-state immunity requires the identification and tracing of fungible proceeds of an exchange for confiscated property; a commingling theory, without more, cannot satisfy the commercial nexus requirement of 28 U.S.C. § 1605(a)(3). *See* Ch. 12, *Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing*, § 12.30[1]; Ch. 104, *Specific Grants of Federal Question Jurisdiction*, § 104.12[3].

Ruling on Motion to Dismiss. In *Bowen v. Energizer Holdings, Inc.*, 118 F.4th 1134 (9th Cir. 2024), the Ninth Circuit found that whether a plaintiff who purchased a product had suffered an economic injury sufficient for Article III standing turned on whether the defendant made false representations about that product, so the jurisdictional and merits issues were intertwined for purposes of Civil Rule 12(b)(1), and the district court erred in the resolving the standing issue when the false-representations issue was disputed. *See* Ch. 12, *Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving De-*

fenses; Pretrial Hearing, § 12.30[4].

Amendment of Pleadings. The First and Tenth Circuits, in *Baez v. Baymark Detoxification Servs., Inc.*, 123 F.4th 62 (1st Cir. 2024), and *Mengert v. United States*, 120 F.4th 696 (10th Cir. 2024), ruled that district courts properly denied leave to amend complaints under Civil Rule 15(a) because the scheduling-order deadlines had passed and the plaintiffs had failed to show good cause to justify extensions under Rule 16(b)(2). *See* Ch. 15, *Amended and Supplemental Pleadings*, § 15.14[1]; Ch. 16, *Pretrial Conferences; Scheduling; Management*, § 16.13[1].

Discovery—Initial Disclosures. The Fifth Circuit, in *Newsome v. Int’l Paper Co.*, 123 F.4th 754 (5th Cir. 2024), ruled that if the default expert-disclosure provisions of Civil Rule 26(a) have been displaced by a more specific scheduling-order deadline, a party seeking to change or add an expert witness after the deadline has passed must show good cause, which requires demonstrating that the deadline could not reasonably have been met despite the diligence of the party asking for the extension; moreover, the mere failure to realize that the initial expert disclosures were faulty is not an adequate explanation, because inadvertence is tantamount to no explanation at all. *See* Ch. 16, *Pretrial Conferences; Scheduling; Management*, § 16.14[1].

Supplemental Jurisdiction. In *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 145 S. Ct. 41, 220 L. Ed. 2d 289 (2025), the

Supreme Court resolved a circuit split and held that the district court loses its supplemental jurisdiction over related state-law claims when a post-removal amended complaint drops the federal claims that enabled removal. *See* Ch. 15, *Amended and Supplemental Pleadings*, §§ 15.16[5], 15.17[3]; Ch. 103, *Federal Question Jurisdiction*, § 103.42; Ch. 106, *Supplemental Jurisdiction*, § 106.66A; Ch. 107, *Removal*, §§ 107.72[3], 107.151[1][a][i], [2][a.1].

Suits Against Government Officials. In *Hussein v. Maaait*, 129 F.4th 99 (2d Cir. 2025), the Second Circuit clarified that the real party in interest in a lawsuit against a government official is determined by three factors: whether the plaintiff sues the defendant in an official or personal capacity, the substance of the claims, and the relief sought. *See* Ch. 17, *Plaintiff and Defendant; Capacity; Public Officers*, § 17.10[1].

Required Joinder. The Ninth Circuit, in *Maverick Gaming LLC v. United States*, 123 F.4th 960 (9th Cir. 2024), affirmed the dismissal under Civil Rule 19 of an action challenging tribal-state gaming compacts, concluding that a tribe was a required party but could not be joined because of its sovereign immunity, and the action could not in equity and good conscience proceed without the tribe. *See* Ch. 19, *Required Joinder of Parties*, § 19.02[3][b].

Permissive Joinder. In *Johnson v. High Desert State Prison*, 127 F.4th 123 (9th Cir. 2025), the Ninth Circuit

held that the district court abused its discretion in denying permissive joinder based on hypothetical concerns; the court explained that permissive joinder under Civil Rule 20 is designed to promote judicial economy and reduce inconvenience, delay, and expense. *See* Ch. 20, *Permissive Joinder of Parties*, § 20.02[2][a][i].

Discovery—Depositions. In *Stansell v. Revolutionary Armed Forces of Colombia*, 120 F.4th 754 (11th Cir. 2024), the Eleventh Circuit held that because the governing scheduling order contained a deadline for depositions, the district court reasonably interpreted it to permit that form of discovery despite the lack of a prior discovery conference under Civil Rule 26(f), so the party was not entitled to a protective order barring the deposition until the conference was held. *See* Ch. 26, *Duty to Disclose; General Provisions Governing Discovery*, §§ 26.101[2], 26.121[1].

Jury Trial. The Ninth Circuit held, in *Consumer Fin. Prot. Bureau v. CashCall, Inc.*, 124 F.4th 1209 (9th Cir. 2025), that the test for whether a claim seeks legal rather than equitable remedies, and thus may be tried to a jury, depends on the substance of the relief sought rather than the label on the complaint. *See* Ch. 38, *Right to a Jury Trial; Demand*, § 38.30[1][e][i].

Relief From Final Judgment, Order, or Proceeding. In *Waetzig v. Halliburton Energy Servs., Inc.*, 604 U.S. —, 145 S. Ct. 690, 221 L. Ed. 2d 143, 2025 U.S. LEXIS 868 (Feb. 26,

2025), the Supreme Court ruled that a voluntary dismissal without prejudice under Civil Rule 41(a) qualifies as a final proceeding that the district court can reopen and reconsider under Rule 60(b), even though it does not dispose of the merits and ordinarily cannot be appealed. *See* Ch. 41, *Dismissal of Actions*, §§ 41.13[11], 41.33[6][i], [j]; Ch. 60, *Relief From a Judgment or Order*, § 60.23; Ch. 202, *Final Judgments*, § 202.03[1].

Bifurcation. In *Sohnen v. Charter Commc'ns, Inc.*, 2025 U.S. Dist. LEXIS 1076 (E.D.N.Y. Jan. 3, 2025), the district court noted that the decision to bifurcate a trial is within the sound discretion of the court, and that discretion, by its nature, yields differing outcomes. *See* Ch. 42, *Consolidation; Separate Trials*, § 42.20[6][b].

Determining Foreign Law. The First Circuit, in *Beijing Abace Biology Co., Ltd. v. Chunhong Zhang*, 122 F.4th 448 (1st Cir. 2024), concluded that the dimensions of foreign law must be determined by the inquiring court, not simply by rubber-stamping the views of an expert witness. *See* Ch. 44.1, *Determining Foreign Law*, § 44.1.04[2][a].

Subpoena. In *Uriel Pharm. Health v. Advoc. Aurora Health, Inc.*, 2025 U.S. Dist. LEXIS 7410 (E.D. Wis. Jan. 10, 2025), the district court denied a motion to compel a nonparty to produce documents in response to a subpoena, because the motion was not filed in the court for the district where compliance was required. *See* Ch. 45, *Subpoena*, § 45.50[4].

Attorney’s Fees—Prevailing Party. The Supreme Court ruled, in *Lackey v. Stinnie*, 604 U.S. —, 145 S. Ct. 659, 221 L. Ed. 2d 63 (2025), that because a preliminary injunction does not conclusively resolve the rights of the parties on the merits, it cannot confer prevailing party status on the plaintiff, regardless of why the case did not proceed to final judgment on the merits. *See* Ch. 54, *Judgment; Costs*, § 54.171[3][c].

Attorney’s Fees—Equal Access to Justice Act. In *Mejia v. O’Malley*, 120 F.4th 1360 (9th Cir. 2024), the Ninth Circuit held that when multiple issues are presented in a case, but the decision of one of them makes it unnecessary to decide others, a fee award under the Equal Access to Justice Act may include compensation for litigating the adjudicated issues. *See* Ch. 54, *Judgment; Costs*, § 54.172[1].

Default Judgment. In *Choice Hospice, Inc. v. Axxess Tech. Sols., Inc.*, 125 F.4th 1000 (10th Cir. 2025), the Tenth Circuit held that lack of notice of default judgment proceedings under Rule 55(b)(2) is generally not a basis for finding the judgment void under Rule 60(b)(4) if the defendant delayed in raising the issue. *See* Ch. 55, *Default; Default Judgment*, § 55.97; Ch. 60, *Relief From a Judgment or Order*, § 60.44[1][a].

Summary Judgment. In *Rodríguez v. Encompass Health Rehab. Hosp. of San Juan, Inc.*, 126 F.4th 773 (1st Cir. 2025), the First Circuit held that the anti-ferret rule is not violated when a party provides gen-

eral citation to a lengthy document and relevant information appears prominently on a vast majority of its pages or when an entire document is proffered to cite to an absence of evidence. *See* Ch. 56, *Summary Judgment*, § 56.24[2], [6].

Time for Appeal—Effect of Post-judgment Motion. In *Blackwell v. Nocerini*, 123 F.4th 479 (6th Cir. 2024), the Sixth Circuit held that because a pretrial order denying qualified immunity as a matter of law is an appealable collateral order, a motion to reconsider the order qualifies as Rule 59(e) motion to alter or amend a “judgment,” and if the motion is timely, it suspends the time for appeal under Appellate Rule 4(a)(4)(A)(iv) until the district court resolves the reconsideration motion. *See* Ch. 59, *New Trial; Altering or Amending a Judgment*, §§ 59.11[3], 59.12[1]; Ch. 304, *Appeal as of Right—When Taken*, § 304.13[2].

District Court’s Authority Pending Appeal. In *Universitas Educ., LLC v. Avon Cap., LLC*, 124 F.4th 1231 (10th Cir. 2025), the Tenth Circuit noted that while an appeal is pending, the district court may preserve the status quo by suspending, modifying, restoring, or granting an injunction. *See* Ch. 62, *Stay of Proceedings to Enforce a Judgment*, § 62.06[3]; Ch. 303, *Appeal as of Right—How Taken*, § 303.32[2][b][ii].

Preliminary Injunction. In *Siders v. City of Brandon*, 123 F.4th 293 (5th Cir. 2024), the Fifth Circuit held that when a plaintiff challenging a

government-imposed restriction on speech seeks a preliminary injunction, the plaintiff's showing that the government is infringing his or her speech gives rise to a presumption of the plaintiff's likelihood of success on the merits, unless the government can rebut the presumption. *See* Ch. 65, *Injunctions and Restraining Orders*, § 65.22[5][e].

Standing—General Interest in Application of Law. The D.C. Circuit, in *Indus. Energy Consumers of Am. v. FERC*, 125 F.4th 1156 (D.C. Cir. 2025), held that a plaintiff claiming only an interest in the proper application of the law lacks standing to sue, absent a showing that the plaintiff is more directly and tangibly benefited than the public. *See* Ch. 101, *Issues of Justiciability*, § 101.40[2][b].

Standing—Assignment of Interest. In *Bertels v. Farm Bureau Prop. & Cas. Ins. Co.*, 123 F.4th 1068 (10th Cir. 2024), the Tenth Circuit held that an invalid assignment would defeat standing when the assignee has suffered no injury. *See* Ch. 101, *Issues of Justiciability*, § 101.40[2][c].

Standing—Threat of Legal Action. The Second Circuit concluded, in *Cerame v. Slack*, 123 F.4th 72 (2d Cir. 2025), that the attorney-plaintiffs had a cognizable pre-enforcement challenge to regulation because they were able to demonstrate that their plausible intent to engage in speech that was arguably proscribed by a professional rule gave rise to a credible threat of enforcement. *See* Ch.

101, *Issues of Justiciability*, § 101.40[4][e].

Standing—Redressability. In *Matsumoto v. Labrador*, 122 F.4th 787 (9th Cir. 2024), the Ninth Circuit found that if a court decision can provide a small incremental step to reduce the risk of harm to the plaintiffs, that is enough to show causation as well as redressability for purposes of establishing standing to sue. *See* Ch. 101, *Issues of Justiciability*, § 101.42[1].

Ripeness. The Ninth Circuit, in *Project Veritas v. Schmidt*, 125 F.4th 929 (9th Cir. 2025), concluded that a media organization's claims challenging a state statute generally prohibiting audio recordings unless all participants are informed were ripe for judicial decision, because they were primarily legal and did not require substantial further factual development. *See* Ch. 101, *Issues of Justiciability*, § 101.76[1][b].

Mootness. In *Aguilar-Quintanilla v. McHenry*, 126 F.4th 1065 (5th Cir. 2025), the Fifth Circuit joined the Fourth, Ninth, and Tenth Circuits in holding that a petition for review challenging the denial of deferral of removal under the Convention Against Torture is not rendered moot by the petitioner's removal from the United States, if a judicial decision in the petitioner's favor could lead to his or her return under the ICE Return Directive. *See* Ch. 101, *Issues of Justiciability*, § 101.95.

Removal—Federal Officer. The Eleventh Circuit held, in *Georgia v. Clark*, 119 F.4th 1304 (11th Cir.

2024), and *Georgia v. Shafer*, 119 F.4th 1317 (11th Cir. 2024) (per curiam), that former officers could not remove their criminal prosecutions to federal court. *See* Ch. 107, *Removal*, § 107.100[4][a.1].

Removal From State Appellate Court. In *Harris v. U.S. DOT*, 122 F.4th 418 (D.C. Cir. 2024), the D.C. Circuit held that a federal officer or agency may remove a case to federal district court from a state appellate court. *See* Ch. 107, *Removal*, § 107.100[5][b][i].

Anti-Injunction Act. In *State Farm Mut. Auto. Ins. Co. v. Tri-Borough NY Med. Prac. P.C.*, 120 F.4th 59 (2d Cir. 2024), the Second Circuit held that the Racketeer Influenced and Corrupt Organizations Act fell within the “expressly authorized by Congress” exception to the Anti-Injunction Act. *See* Ch. 121, *The Anti-Injunction Acts*, § 121.06.

Pullman Abstention. The Fourth Circuit, in *W. Va. Parents for Religious Freedom v. Christiansen*, 124 F.4th 304 (4th Cir. 2024), held that *Pullman* abstention did not apply to a challenge to West Virginia’s vaccine mandate on First Amendment grounds, because the challenge was not based on a claim that state law was unclear. *See* Ch. 122, *Abstention Doctrines*, § 122.23[2][d].

Erie Doctrine. In *Zanetich v. Wal-Mart Stores E., Inc.*, 123 F.4th 128 (3d Cir. 2024), The Third Circuit applied the forum state’s choice-of-law rules, which mandated the application of forum state’s substantive law; in *Meek v. Kansas City Life Ins.*

Co., 126 F.4th 577 (8th Cir. 2025), the Eighth Circuit also applied the forum state’s choice-of-law rules but concluded that a different state’s tort law applied, because the forum state’s law provided that when the wrongful conduct and the injury occurred in two different states, the place where the act took harmful effect or produced the result complained of was the more significant contact. *See* Ch. 124, *The Erie Doctrine and Applicable Law*, § 124.30[1].

Collateral Order Doctrine. In *Clark v. Santander Bank, N.A.*, 122 F.4th 56 (2d Cir. 2024), the Second Circuit held that the denial of a motion to proceed pro se is an appealable collateral order. *See* Ch. 202, *Final Judgments*, § 202.07[1].

Appeal of Arbitration-Related Order. The Fifth Circuit, in *Ashley v. Clay County*, 125 F.4th 654 (5th Cir. 2025), held that although an order compelling arbitration ordinarily is not appealable, the district court’s failure to resolve a challenge to its jurisdiction before entering such an order is appealable under the collateral order doctrine. *See* Ch. 202, *Final Judgments*, §

§ 202.07[1], [2][b]; Ch. 203, *Interlocutory Orders*, § 203.12[3][b].

Perlman Doctrine. The Second Circuit, in *United States v. Sealed Appellant (In re Grand Jury Subpoenas Dated Sept. 13, 2023)*, 128 F.4th 127 (2d Cir. 2025), held that when an attorney has been ordered to produce a client’s privileged materials to a grand jury over the client’s objection,

the client may take an immediate appeal from that order; the *Perlman* doctrine, which authorizes such an appeal, was not overruled by the Supreme Court's 2009 decision in *Mohawk Industries, Inc. v. Carpenter*. See Ch. 202, *Final Judgments*, § 202.11[2][a].

Federal Arbitration Act. In *Espin v. Citibank, N.A.*, 126 F.4th 1010 (4th Cir. 2025), the Fourth Circuit ruled that the Servicemembers Civil Relief Act, which provides that aggrieved persons may seek relief in class action “notwithstanding any previous agreement to the contrary,” 50 U.S.C. § 4042(a)(3), does not override the Federal Arbitration Act's command that arbitration agreements are generally valid, irrevocable, and enforceable. See Ch. 203, *Interlocutory Orders*, § 203.12[1].

Discretionary Appeal. The Fifth Circuit, in *Silverthorne Seismic, L.L.C. v. Sterling Seismic Servs., Ltd.*, 125 F.4th 593 (5th Cir. 2025), held that a pretrial ruling on how damages could be proven generally does not involve a controlling question of law that would warrant certification for interlocutory appeal under 28 U.S.C. § 1292(b). See Ch. 203, *Interlocutory Orders*, § 203.31[2], [3].

Exhaustion of Administrative Remedy Under Prison Litigation Reform Act. The Eighth Circuit, in *Perry v. Precythe*, 121 F.4th 711 (8th Cir. 2024) held that an administrative remedy is considered unavailable to an inmate, and therefore need not be exhausted before the inmate files a

suit over prison conditions, if physical or mental incapacity prevents the inmate from filing a timely grievance, and the administrative system does not permit late filing under those circumstances. See Ch. 205, *Reviewability of Issues*, § 205.07[1].

Complex Appeals. In *TikTok Inc. v. Garland*, 604 U.S. —. 145 S. Ct. 57, 220 L. Ed. 2d 319 (2025), the Supreme Court assumed without deciding that the statute effectively requiring the sale of TikTok triggered heightened review, and the Court went on to conclude that the statute is facially content-neutral and is justified by a content-neutral rationale. See Ch. 207, *Complex Appeals*, § 207.62.

Restraining Order Limiting Government Action. In *Dep't of State v. AIDS Vaccine Advoc. Coal.*, 604 U.S. —, — S. Ct. —, — L. Ed. 2d —, 2025 U.S. LEXIS 959 (Mar. 5, 2025), the Supreme Court initially stayed but ultimately denied a motion to vacate the district court's restraining order enjoining the government from enforcing directives to pause disbursements of foreign development assistance funds. See Ch. 208, *Practice in the Federal Circuit*, § 208.02.

Patent Proceedings. The Federal Circuit held, in *Apple Inc. v. Gesture Tech. Partners, LLC*, 129 F.4th 1367 (Fed. Cir. 2025), that the Patent Trial and Appeal Board retains jurisdiction over Inter Partes Review of expired patents. The court also rejected, in *Apple Inc. v. Gesture Tech. Partners, LLC*, 127 F.4th 364 (Fed. Cir. 2025),

the theory that a patent as a “public franchise” ceases to exist upon its expiration and thus ends the jurisdiction of Patent Trial and Appeal Board. *See* Ch. 208, *Practice in the Federal Circuit*, § 208.20[1][a].

Notice of Appeal. In *Gelin v. Baltimore County*, 122 F.4th 531 (4th Cir. 2024), the Fourth Circuit ruled that if a notice of appeal is filed before the district court fully resolves a motion to reconsider, and the premature nature of the appeal does not become apparent until significant judicial and attorney resources have

been expended, the appellate court may exercise jurisdiction and stay the appeal until the district court finishes dealing with the reconsideration motion. *See* Ch. 304, *Appeal as of Right—When Taken*, §§ 304.12, 304.13[1].

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Publication 410 Release 226

June 2025

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☐	16-79 thru 16-82.4(1)	16-79 thru 16-82.4(1)

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☐	19-47 thru 19-49	19-47 thru 19-50.1
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☐	19-99 thru 19-100.1	19-99 thru 19-100.1
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☐	20-57.	20-57 thru 20-58.1
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☐	205-59 thru 205-78.1	205-59 thru 205-78.1
☐	206-27 thru 206-45	206-27 thru 206-46.1
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