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Legal Sidebar

Supreme Court Reiterates Congress's Exclusive Role in Regulating Lower Federal Court Jurisdiction

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The Supreme Court's first signed opinion from the October 2017 term addressed the Federal Rules of Appellate Procedure (FRAP), a body of procedural rules created by the Supreme Court (under statutory authorization) that supplements statutory rules governing federal appellate litigation. In *Hamer v. Neighborhood Housing Services of Chicago*, the Court assessed whether FRAP 4(a)(5)(C), which governs the timeliness of an appeal, is jurisdictional in nature or, rather, a mandatory claim-processing rule. When a rule is jurisdictional, a party's failure to comply with it deprives the court of jurisdiction to hear the matter. Conversely, a claim-processing rule is designed to streamline litigation by requiring parties to do certain things at certain times (e.g., a rule laying out the procedures and timeline for filing a notice of appeal) but, if not followed, does not interfere with a court's jurisdiction. In *Hamer*, the Supreme Court unanimously reversed the Seventh Circuit's holding that FRAP 4(a)(5)(C) is a jurisdictional rule requiring a lawsuit's dismissal if the appellant untimely files a notice of appeal. In doing so the Court sent a clear message that Congress, and only Congress, may create rules governing the jurisdiction of the lower federal courts, and thus, court-made rules—even if made pursuant to legislative authority—will never be construed as jurisdictional.

Article III of the Constitution vests "[t]he judicial power of the United States . . . in one Supreme Court, *and in such inferior courts as the Congress may from time to time ordain and establish*." Congress first exercised this constitutional authority by enacting the Judiciary Act of 1789, which established the federal district and circuit courts, and has since created additional rules governing those courts in Title 28 of the U.S. Code. One of the rules is found in 28 U.S.C. § 2107, which establishes time limits for filing a notice of appeal. According to that rule, a notice of appeal generally must be filed within 30 days, or, if one of the parties is part of the federal government, within 60 days. Failure to file within the statutorily prescribed period will deprive the appellate court of jurisdiction to review the appeal. However, under § 2107(c), the district court may, upon request within 30 days after the initial filing deadline, extend the time for filing a notice of appeal if the movant demonstrates "excusable neglect or good cause."

The Supreme Court also plays a role in managing the federal courts. In particular, 28 U.S.C. § 2072 authorizes the Supreme Court to create procedural rules for the lower federal courts. The Court has

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exercised this authority by adopting the FRAP. FRAP 4(a) establishes procedures for filing an appeal in federal court. On top of the statutory filing requirements found in 28 U.S.C. § 2107, FRAP 4(a)(5)(C) additionally mandates that the extension of time granted by the district court for the filing of an appeal may not exceed the longer of 14 days after the motion is granted or 30 days after the original deadline.

Hamer involves a so-far unsuccessful employment-discrimination lawsuit brought by Charmaine Hamer against her former employers. A district judge in Chicago granted summary judgment in favor of the defendant employers on September 14, 2015, making the appeal filing deadline 30 days later on October 14, 2015. A week before the filing deadline expired, Hamer requested an extension of time to file a notice of appeal. The court granted the request, extending the deadline by 61 days to December 14. Hamer filed the notice of appeal on December 11.

On its own initiative, the Seventh Circuit asked the defendants to brief whether Hamer's appeal was timely given that she filed her notice of appeal beyond the 30 days allowed for an extension authorized in FRAP 4(a)(5)(c). In response the defendants argued that Hamer's appeal was untimely and, as a result, the Seventh Circuit lacked jurisdiction to hear the case. Hamer countered that the timing rule was not jurisdictional and that, because the defendants failed to raise the issue on their own, the defendants had waived their right to contest the timeliness of the appeal. The Seventh Circuit ultimately concluded that FRAP 4(a)(5)(C) is a jurisdictional rule, given the Supreme Court's mandate that "the statutory requirement for filing a timely notice of appeal is 'mandatory and jurisdictional,'" and that FRAP 4(a)(5)(C), according to the Seventh Circuit, "is the vehicle by which § 2107(c) is employed." Accordingly, because Hamer filed the notice of the appeal beyond FRAP 4(a)(5)(C)'s 30-day window, the Seventh Circuit concluded that it lacked jurisdiction and dismissed the appeal.

Thus, the crux of the issue before the Supreme Court in *Hamer* was whether FRAP 4(a)(5)(C) is jurisdictional or, rather, a mandatory claim-processing rule. If FRAP 4(a)(5)(C) is a claim-processing rule, rather than a jurisdictional rule, the Seventh Circuit potentially could have reviewed Hamer's appeal despite the fact that she filed the notice of appeal outside of FRAP 4(a)(5)(C)'s 30-day limit.

The Supreme Court concluded that the Seventh Circuit had misapplied relevant Supreme Court precedent concerning when a rule governing the timeliness of an appeal is jurisdictional. The Court conceded that in some past cases it had "mischaracterize[ed] claim-processing rules . . . as jurisdictional limitations, particularly when that characterization was not central to the case." But the Court stressed that the distinction is "critical," given that a party's failure to comply with a jurisdictional time limit deprives the presiding court of jurisdiction over the case. Accordingly, in *Hamer* the Court emphasized that only Congress may create rules governing the lower federal court's subject-matter jurisdiction. Further, the Court reiterated precedent holding that "[i]f a time prescription governing the transfer of adjudicatory authority from one Article III court to another appears *in a statute,* the limitation is jurisdictional; otherwise, the time specification fits within the claim-processing category." Accordingly, the Court concluded that "[i]n conflating Rule 4(a)(5)(C) with [28 U.S.C.] § 2107(c), the Court of Appeals failed to grasp the distinction our decisions delineate between jurisdictional appeal filing deadlines and mandatory claim-processing rules."

The key takeaway for Congress from *Hamer* is the Supreme Court's reminder that only the legislative branch may make rules governing the inferior federal courts' subject-matter jurisdiction. Accordingly, Congress has the authority to codify FRAP 4(a)(5)(C)'s time limits or to establish other jurisdictional limits for federal litigation.

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