Appellate Practice and Procedure

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I. INTRODUCTION

Rules of practice and procedure in appellate courts, such as the United States Court of Appeals for the Eleventh Circuit, significantly impact cases brought before those courts comprising the circuit. From enforcement of procedural rules requiring the timely filing of a notice of appeal to application of justiciability doctrines to determine a party's standing to bring a claim, issues of practice and procedure commonly arise at the court of appeals.

This Article explores the application of practice and procedure by the Eleventh Circuit during 1999. The topics discussed include appellate culling of appealable issues; appellate treatment of interlocutory matters; timeliness of notice of appeal and presentation of argument; doctrines of standing, ripeness, justiciability, and mootness; and standards of review on appeal. This Article also identifies common themes or trends when apparent.

Technology has begun to intrude upon the application of practice rules within the Eleventh Circuit. In a 1999 case, the court grappled with the impact of emerging technology and its incorporation into appellate procedure. In Hollins v. Department of Corrections,1 appellant filed a notice of appeal more than fourteen months after the district court's final order had been entered, well past the deadline for filing an appeal. The court faced the issue of whether the late filing was excused because of...

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1. 191 F.3d 1324 (11th Cir. 1999).
appellant's reliance on the Public Access to Court Electronic Records ("PACER") system's version of the docket sheet, which failed to show the district court's entry of the final order. In finding that it was excused, the court stated,

Providing electronic access to court calendars, dockets and other essential information is a project of long standing in the federal courts. Services such as the PACER system, while still somewhat experimental, continue to receive strong endorsements and have generated ever increasing demand . . . both from within the legal community and from other interested parties. By allowing parties and their counsel to monitor the progress of their cases (and, in some jurisdictions, to file pleadings and other material) without traveling to court and placing demands upon the time of court personnel, systems such as PACER ease costs for both parties and the courts. But that and other benefits of such systems will arise only if parties actually can rely on electronically available court information. In this context, we conclude it was not unreasonable for Hollins [sic] counsel to rely on the PACER docket.

This resolution appears to forecast the court's commitment to incorporating technology into the appellate arena while giving litigants some measure of assurance that reliance upon new technology will not prove fatal in instances when that technology fails.

II. APPELLATE CULLING OF APPEALABLE ISSUES

Consideration of the many cases raising practice and procedure issues before the Eleventh Circuit in 1999 reveals several common themes. First, the court applied its rules of practice and procedure to dismiss appeals and issues not appropriate for appellate consideration at the time of their presentation to the court. The court did not, however, apply those rules at the cost of ensuring justice in cases before it. Additional support for this trend is seen in the court's continued emphasis on goals of judicial economy and efficiency. Finally, the court also provided thorough explanations for its decisions on issues of appellate practice and procedure, most likely with the aim of providing district courts with enough guidance to eliminate repeated appeals involving the same or similar issues.

Application of appellate practice and procedure rules by the Eleventh Circuit enabled the court to dispose of many cases and issues not

2. Id. at 1325.
3. Id. at 1327 (internal quotation marks and citation omitted).
appropriate for resolution by it. For example, in *Woodard v. STP Corp.*, the court refused to review the district court's order denying plaintiff's motion for remand on the basis that it did not have proper jurisdiction. The court found that although the district court's subsequent order granting plaintiff's motion for voluntary dismissal was a final judgment, the manner in which that judgment was obtained—pursuant to plaintiff's request—militated against its treatment as an appealable final judgment of the remand issue. Similarly, in *State Treasurer of Michigan v. Barry*, the court held that it lacked jurisdiction over the appeal. The district court's partial summary judgment order left plaintiff's claims and defendant's counterclaim pending. Furthermore, the parties were trying to create a final judgment as to the summary judgment for purposes of appeal by stipulating to dismissal, without prejudice, of the remaining claims. Finally, in *Druhan v. American Mutual Life*, the court again declined to exercise jurisdiction over the appeal of an interlocutory order denying plaintiff's motion to remand and the subsequent final judgment granting plaintiff's request for voluntary dismissal with prejudice. Plaintiff requested the dismissal with prejudice only as a means of establishing finality in the case such that she could immediately appeal the interlocutory order. Thus, the court refused to consider the case because the district court's order denying remand was not among the orders from which an interlocutory appeal lies as a matter of right under 28 U.S.C. § 1292(a)(1), and because plaintiff did not seek an appeal by certification pursuant to 28 U.S.C. § 1292(b). In *Dzikowski v. Boomer's Sports & Recreation Center, Inc. (In re Boca Arena, Inc.)*, the court refused to allow appellate review under Rule 54(b) of the Federal Rules of Civil Procedure because there was no Rule 54(b) certification. The court rejected appellant's argument that certification was not required because of the applicability of the

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4. 170 F.3d 1043 (11th Cir. 1999).
5. *Id.* at 1044.
6. *Id.*
7. 168 F.3d 8 (11th Cir. 1999).
8. *Id.* at 16.
9. *Id.* at 11.
10. *Id.*
11. 166 F.3d 1324 (11th Cir. 1999).
12. *Id.* at 1325-26.
13. *Id.* at 1326.
14. *Id.*
15. 184 F.3d 1285 (11th Cir. 1999).
16. *Id.* at 1286.
Bankruptcy Code.\textsuperscript{17} First, the court recognized that bankruptcy rules expressly provide that Rule 54(a)-(c) of the Federal Rules of Civil Procedure applies in adversarial proceedings in bankruptcy.\textsuperscript{18} Accordingly, the court reasoned, "a bankruptcy order that disposes of fewer than all claims or parties in an adversary proceeding is not immediately appealable unless the bankruptcy judge certifies the order for immediate review pursuant to Bankruptcy Rule 7054, which incorporates Fed. R. Civ. P. 54(b)."\textsuperscript{19} Next, the court rejected the bankruptcy trustee's argument that flexible concepts of finality in bankruptcy proceedings override the clear mandate of Rule 54(b) and allow such an appeal to proceed absent Rule 54(b) certification.\textsuperscript{20} Preferring the bright-line rule established by Rule 54(b), the court dismissed the trustee's appeal because there was no Rule 54(b) certification.\textsuperscript{21} All these cases demonstrate the court's desire to promote judicial efficiency and avoid piecemeal appeals by looking behind the facade created by the parties in their attempts to prematurely appeal their cases to the Eleventh Circuit.\textsuperscript{22}

The court similarly scrutinized litigants attempting to appeal under the collateral order doctrine.\textsuperscript{23} In \textit{Summit Medical Associates v. Pryor},\textsuperscript{24} the court analyzed whether it could exercise appellate jurisdiction pursuant to the collateral order doctrine.\textsuperscript{25} In finding that it did not have jurisdiction to review a denial of a motion to dismiss for want of standing, the court relied on the fact that appellant had failed to demonstrate the applicability of all three requirements for application of the collateral order doctrine.\textsuperscript{26} In \textit{Citizens Concerned About Our Children v. School Board of Broward County, Florida},\textsuperscript{27} the court was presented with the mirror image of the \textit{Summit} issue—whether the grant of a dismissal for want of standing was reviewable.\textsuperscript{28} As in \textit{Summit}, the court in \textit{Citizens Concerned About Our Children} found the order unreviewable under the collateral order doctrine.\textsuperscript{29} In both cases

\begin{itemize}
  \item \textsuperscript{17} Id.
  \item \textsuperscript{18} Id.
  \item \textsuperscript{19} Id.
  \item \textsuperscript{20} Id. at 1287.
  \item \textsuperscript{21} Id.
  \item \textsuperscript{22} See State Treasurer of Mich., 168 F.3d at 16.
  \item \textsuperscript{23} See discussion infra Part III.
  \item \textsuperscript{24} 180 F.3d 1326 (11th Cir. 1999).
  \item \textsuperscript{25} Id. at 1334.
  \item \textsuperscript{26} Id. at 1334-35.
  \item \textsuperscript{27} 193 F.3d 1285 (11th Cir. 1999) (per curiam).
  \item \textsuperscript{28} Id. at 1288.
  \item \textsuperscript{29} Id. at 1290.
\end{itemize}
the orders were reviewable on appeal from a final judgment; thus, they were not reviewable interlocutorily because the third requirement for application of the collateral order doctrine was not satisfied.\footnote{30}

In 1999 the court also applied procedural rules regarding the timely filing of notices of appeal to dispose of cases not properly appealed. In \textit{Roberts v. Commissioner},\footnote{31} the court refused to excuse an untimely notice of appeal and rejected the argument that the Bankruptcy Code extended the parties’ time to appeal.\footnote{32} As indicated above, however, the court did not sacrifice justice while applying practice and procedure rules. When justice so required, the court departed from strict adherence to those rules. For example, in \textit{Hollins v. Department of Corrections},\footnote{33} the court excused a party’s untimely appeal because the lateness of the appeal resulted from a mistake in the district court computer docketing system.\footnote{34} Similarly, in \textit{Summit} the court departed from its usual refusal to hear arguments raised for the first time on appeal to “avoid a miscarriage of justice.”\footnote{35} By departing from its general practices in both \textit{Hollins} and \textit{Summit}, the court demonstrated that it would not blindly apply its rules of practice and procedure, but would instead apply them with the goals of ensuring fairness and adjudicating the merits of disputes when possible.

When necessary, the court also gave district courts significant guidance on issues remanded to those courts. In \textit{McKinley v. Kaplan},\footnote{36} the court provided the district court with a discussion of the proper disposition of a motion to amend under Rule 15(a) of the Federal Rules of Civil Procedure, after deciding that the district court abused its discretion by not allowing plaintiff to amend her complaint.\footnote{37} Such thorough analysis in this case, as well as in others, helps guide district courts in the disposition of similar issues, thereby decreasing the likelihood that the Eleventh Circuit will see repeated appeals of the same issue. This, in turn, promotes judicial efficiency and economy—a trend continuing from the 1990s.

\begin{footnotes}
\item[30] Id.; \textit{Summit}, 180 F.3d at 1334-35.
\item[31] 175 F.3d 889 (11th Cir. 1999).
\item[32] Id. at 893.
\item[33] 191 F.3d 1324 (11th Cir. 1999).
\item[34] Id. at 1325-26. For further discussion of \textit{Hollins}, see infra notes 80-84 and accompanying text.
\item[35] 180 F.3d at 1341 n.12 (quoting Roofing & Sheet Metal Servs., Inc. v. LaQuinta Motor Inns, Inc., 689 F.2d 982, 989 (11th Cir. 1982)).
\item[36] 177 F.3d 1253 (11th Cir. 1999).
\item[37] Id. at 1258.
\end{footnotes}
III. APPELLATE TREATMENT OF INTERLOCUTORY MATTERS

Appellate courts have jurisdiction to review cases after final judgment from courts below.\(^{38}\) In addition, there are circumstances in which appellate courts have jurisdiction to hear interlocutory appeals, which are appeals taken before final judgment. Appellants who seek interlocutory review must demonstrate the existence of an appropriate basis for

\(^{38}\) See 28 U.S.C. § 1291 (1994). This section provides,

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

Id.; see also Bishop v. Avera, 177 F.3d 1233, 1234 n.1 (11th Cir. 1999) (exercising jurisdiction to review a denial of summary judgment on a qualified immunity claim); Campbell v. Sikes, 169 F.3d 1353, 1361 (11th Cir. 1999) (reviewing final judgment of magistrate judge granting summary judgment for defendants). But see Woodard v. STP Corp., 170 F.3d 1043, 1044 (11th Cir. 1999) (holding that the court lacked jurisdiction to review the district court order granting with prejudice plaintiff's motion for voluntary dismissal because, even though the order was a final judgment, it was obtained at the request of the plaintiff and therefore involved no case or controversy); State Treasurer of Mich. v. Barry, 168 F.3d 8, 13 (11th Cir. 1999) (holding that the court lacked jurisdiction for appeal because the district court's partial summary judgment order left plaintiff's claims and defendant's counterclaim pending and, hence, was not a final decision, and the parties could not create appellate jurisdiction by obtaining dismissal of the remaining claims without prejudice); Druhan v. American Mut. Life, 166 F.3d 1324, 1325-26 (11th Cir. 1999) (holding that the court does not have jurisdiction to hear an appeal from an interlocutory order denying plaintiff's motion to remand and the subsequent final judgment granting plaintiff's request for voluntary dismissal with prejudice because plaintiff requested the dismissal with prejudice only as a means of establishing finality in the case such that she could immediately appeal the interlocutory order, because the district court's order denying remand was not among the orders from which an appeal lies as a matter of right under 28 U.S.C. § 1292(a)(1), and because plaintiff did not seek an appeal by certification pursuant to 28 U.S.C. § 1292(b)). The "final judgment" rule serves several salutary purposes, such as preventing piecemeal appeals that might otherwise undermine the independence of the district judge, avoiding obstruction to just claims, and promoting efficient judicial administration. Cunningham v. Hamilton County, Ohio, 527 U.S. 198, 203-04 (1999). When Congress sets forth special rules governing appeals, such as those rules set forth in the Federal Arbitration Act that govern appeals from a district court's arbitration order, the court may look to those rules to determine whether a decision is appealable, instead of 28 U.S.C. § 1291. Randolph v. Green Tree Fin. Corp., 178 F.3d 1149, 1152 (11th Cir. 1999).
immediate appeal; failure to do so may prove as fatal as neglecting to file a notice of appeal or filing this notice in an untimely fashion.\textsuperscript{39}

Pursuant to 28 U.S.C. § 1292(a)(1), the Eleventh Circuit generally has jurisdiction to hear interlocutory appeals regarding a lower court's grant, continuation, modification, refusal, dissolution, or refusal to dissolve or modify an injunction.\textsuperscript{40} The court has held that under Section 1292(a)-(1), an order that does not rule on a request for injunctive relief, but that has the effect of denying it, may also be immediately appealable if the appellant demonstrates that the denial of injunctive relief would have a "serious, perhaps irreparable, consequence, and that the order can be effectually challenged only by immediate appeal."\textsuperscript{41} In \textit{Citizens Concerned About Our Children v. School Board of Broward County, Florida},\textsuperscript{42} the court rejected the argument of Citizens Concerned About Our Children ("CCC") that interlocutory review was permissible under 28 U.S.C. § 1292(a)(1).\textsuperscript{43} The court recognized that CCC's complaint requested injunctive relief, but also found that in almost "two years between the filing of the complaint and the district court's dismissal of CCC's claims for want of standing, CCC did not move for preliminary injunctive relief."\textsuperscript{44} Even though the court acknowledged that a request for preliminary or permanent relief will not necessarily be dispositive, it found that CCC's failure to seek immediate relief suggested that delay of the appeal until final judgment would not inflict irreparable harm.\textsuperscript{45}

In 1999 the court also examined interlocutory appellate jurisdiction under 28 U.S.C. § 1292(a)(3), which grants courts of appeals jurisdiction over interlocutory decrees determining the rights and liabilities of parties to admiralty cases.\textsuperscript{46} In \textit{Sea Lane Bahamas, Ltd. v. Europa


\textsuperscript{40} See 28 U.S.C. § 1292(a)(1) (1994). See, e.g., Sierra Club v. Georgia Power Co., 180 F.3d 1309, 1310 (11th Cir. 1999) (per curiam) (reviewing the district court's denial of appellant's motion for preliminary injunction); Doe v. Stincer, 175 F.3d 879, 880-81 (11th Cir. 1999) (reviewing the district court's order permanently enjoining enforcement of a Florida statute); Allen v. Alabama State Bd. of Educ., 164 F.3d 1347, 1350 (11th Cir. 1999) (finding that the court had jurisdiction over an appeal of the district court's refusal, without prejudice, to vacate a consent decree containing injunctive relief).

\textsuperscript{41} Citizens Concerned About Our Children v. School Bd. of Broward County, Fla., 193 F.3d 1285, 1289 (11th Cir. 1999) (per curiam) (quoting Stringfellow v. Concerned Neighbors in Action, 480 U.S. 370, 379 (1987)).

\textsuperscript{42} Id. at 1289.

\textsuperscript{43} Id. at 1290.

\textsuperscript{44} Id.

\textsuperscript{45} See 28 U.S.C. § 1292(a)(3) (1994). This section provides that "the courts of appeals shall have jurisdiction of appeals from interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in
Cruises Corp., the court found that it did not have jurisdiction under Section 1292(a)(3) and accordingly dismissed the appeal of the district court's denial of appellant's motion to reopen the case and amend the complaint to add a party. The court found that the appeal involved an issue of admiralty law, but determined that the presence of an admiralty issue alone did not fulfill the requirements of Section 1292(a)(3). Because the district court's denial of appellant's motions did not determine the "rights and liabilities of the parties," as required by Section 1292(a)(3), the court declined to exercise appellate jurisdiction. The court based this decision, at least in part, on its determination that Section 1292(a)(3) should be construed narrowly.

Additional bases of interlocutory appellate jurisdiction exist pursuant to 28 U.S.C. § 1292(b) and Rule 54 of the Federal Rules of Civil Procedure. Under 28 U.S.C. § 1292(b), a district court judge can certify an order for interlocutory review when (1) the order concerns "a controlling question of law as to which there is substantial ground for difference of opinion," and (2) "immediate appeal from the order may materially advance the ultimate termination of the litigation." When these two requirements are met, the court of appeals may, in its discretion, permit the appeal if application is made within ten days after entry of the district court's order. The court permitted appeal pursuant to Section 1292(b) several times in 1999. For example, in Bryant v. Avado Brands, Inc., the court permitted appeal following the district court's certification of an order denying defendants' motion to dismiss so the court could answer "novel questions" under the Private Securities Litigation Reform Act of 1995. Similarly, in Davis v. Carl Cannon Chevrolet-Olds, Inc., following the district court's certification of an order denying plaintiffs' motion to remand, the court permitted appeal which appeals from final decrees are allowed." Id.

47. 188 F.3d 1317 (11th Cir. 1999).
48. Id. at 1326.
49. Id.
50. Id.
51. Id. at 1322.
52. 28 U.S.C. § 1292(b) (1994).
53. Id.
54. See, e.g., BLAB T.V. of Mobile, Inc. v. Comcast Cable Communications, Inc., 182 F.3d 851 (11th Cir. 1999) (exercising jurisdiction pursuant to 28 U.S.C. § 1292(b) to address whether Section 612 of the Cable Communications Policy Act of 1984 completely preempts state law tort and breach of contract claims involving "leased access" cable channels such that claims are removable to federal court).
55. 187 F.3d 1271 (11th Cir. 1999).
56. Id. at 1273.
57. 182 F.3d 792 (11th Cir. 1999).
to address issues of diversity jurisdiction. However, if a party does not seek or receive a certification order from the district court, the appellate court cannot permit appeal unless there is an alternative basis for appeal, such as appeal from a final judgment.

Under Rule 54 of the Federal Rules of Civil Procedure, when multiple claims for relief are presented in one action, the court may direct entry of final judgment as to fewer than all the claims or parties if there is an express determination by the court that "there is no just reason for delay." Even when a court enters judgment with regard to one of the parties in a case involving multiple parties and enters that judgment based on Rule 54(b), the court of appeals may construe the district court's order as constituting a final judgment pursuant to Rule 54(b).

In *Harris v. United States*, the court construed the district court's order as a final judgment under Rule 54(b) even though the district court entered final judgment in favor of only one of the parties under Rule 58 of the Federal Rules of Civil Procedure. The court cited two justifications for doing this: (1) the appellant moved the district court to certify its judgment "in favor of [the one party] under Rule 54(b), and the district court stated in its order that it was granting that motion"; and (2) because the district court had not rendered a final judgment with respect to the other party, it could not have entered judgment in favor of the one unless it did so under Rule 54(b).

An order that is not final as contemplated by 28 U.S.C. § 1291 does not fall within the classes of orders for which interlocutory review is authorized under 28 U.S.C. § 1292(a) and that has not been certified for appeal under 28 U.S.C. § 1292(b) or Rule 54(b) of the Federal Rules of Civil Procedure may nevertheless be reviewable under the collateral order doctrine established by the United States Supreme Court in *Cohen v. Beneficial Life Industrial Loan Corp.* Under the collateral order doctrine, also called the *Cohen* doctrine, an appellate court may review

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58. *Id.* at 794.
59. *Woodard v. STP Corp.*, 170 F.3d 1043, 1044 (11th Cir. 1999) (stating plaintiff could not appeal directly from the lower court's order denying remand because plaintiff did not obtain district court certification).
60. *Fed. R. Civ. P. 54(b).* See, *e.g.*, *Rodriguez v. United States*, 169 F.3d 1342, 1346 (11th Cir. 1999); *Crum v. Alabama (In re Employment Discrimination Litig. Against Ala.)*, 198 F.3d 1305, 1309-10 (11th Cir. 1999); *Boyd v. Homes of Legend, Inc.*, 188 F.3d 1294, 1297 (11th Cir. 1999).
61. *Harris v. United States*, 175 F.3d 1318, 1320 (11th Cir. 1999).
62. 175 F.3d 1318 (11th Cir. 1999).
63. *Id.* at 1320.
64. *Id.*
a nonfinal judgment if the order (1) conclusively determines the disputed question, (2) resolves an important issue completely separate from the merits of the action, and (3) may be effectively unreviewable on appeal from a final judgment. In Summit Medical Associates v. Pryor, the Eleventh Circuit applied the Cohen doctrine to consider whether the district court erred in concluding that appellants were not entitled to sovereign immunity. Likewise, in Tamiami Partners, Ltd. v. Miccosukee Tribe of Indians of Florida, the court exercised its appellate jurisdiction pursuant to the Cohen doctrine to review the district court's denial of sovereign immunity to defendants. There are limits, however, on the court's exercise of appellate jurisdiction pursuant to the Cohen doctrine. For example, in Summit Medical Associates and Citizens Concerned About Our Children, the court declined to review, pursuant to the Cohen doctrine, the district courts' orders regarding standing because, in both cases, those orders would be reviewable on appeal from final judgment, and, thus, they failed to satisfy the third prong of the Cohen test.

The court's treatment of interlocutory matters during 1999 demonstrates its strict enforcement of the prerequisites for interlocutory appeal. The rationale for strict adherence to the final judgment rule and narrow application of statutes and rules permitting interlocutory appeals is likely judicial efficiency, that is, the court's interest in expediting litigation, assuring district court supervision of dockets, and limiting the number of appeals and issues before the court of appeals. Those interests have affected other aspects of appellate practice and procedure as well.

IV. TIMELINESS OF NOTICE OF APPEAL AND PRESENTATION OF ARGUMENT

When an interlocutory appeal is properly pursued, that appeal must still comply with procedural rules requiring the timely filing of a notice

66. Id. at 546.
67. 180 F.3d 1326 (11th Cir. 1999).
68. Id. at 1334.
69. 177 F.3d 1212 (11th Cir. 1999).
70. Id. at 1221; see also Jones v. Cannon, 174 F.3d 1271, 1280 (11th Cir. 1999) (exercising jurisdiction under the Cohen doctrine to review defendants' claims of absolute and qualified immunity under federal law in an action brought under 42 U.S.C. § 1983); Mastroianni v. Bowers, 173 F.3d 1363, 1366 (11th Cir. 1999) (review of denial of summary judgment based on absolute and qualified immunity); Wascura v. Carver, 169 F.3d 683, 685 (11th Cir. 1999) (review of denial of qualified immunity).
71. Citizens Concerned About Our Children, 193 F.3d at 1290; Summit, 180 F.3d at 1334-35; see also supra notes 24-30 and accompanying text.
of appeal. Under Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure, notice of appeal in a civil case must be filed with the district court clerk within thirty days after entry of the judgment or order appealed from. 72 "[T]he timely filing of a notice of appeal is mandatory and jurisdictional." 73 Thus, if a party fails to file a timely notice of appeal, the court lacks jurisdiction to decide the issues presented. 74 Rule 4(a)(5) of the Federal Rules of Appellate Procedure and the "unique circumstances" doctrine offer limited alternatives for the exercise of jurisdiction by the appellate court, despite a party's untimely appeal. Under Rule 4(a)(5) "[t]he district court may extend the time to file a notice of appeal if (i) a party so moves no later than 30 days after" the judgment or order appealed from is entered, and "(ii) that party shows excusable neglect or good cause." 75 In considering whether there has been excusable neglect, a court may consider "the danger of prejudice to the other party, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." 76 Under the unique circumstances doctrine, either the district court or the appellate court may permit an appeal, though untimely, in situations "where a party has performed an act which, if properly done, would postpone the deadline for filing his appeal and has received specific assurance by a judicial officer that this act has been properly done." 77

During 1999 the court examined issues relating to notices of appeal in several contexts. In *Wilson v. Navistar International Transportation* 72, FED. R. APP. P. 4(a)(1)(A). Note, however, that under Rule 4(a)(1)(B) of the Federal Rules of Appellate Procedure, "[w]hen the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered." FED. R. APP. P. 4(a)(1)(B).

73. Hollins v. Department of Corrections, 191 F.3d 1324, 1326 (11th Cir. 1999) (internal quotation marks omitted).

74. Id.

75. FED. R. APP. P. 4(a)(5).


77. Hollins, 191 F.3d at 1327 (citing Osterneck v. Ernst & Whinney, 489 U.S. 169, 179 (1989)). In *Pinion v. Dow Chemical, U.S.A.*, 928 F.2d 1522 (11th Cir. 1991), the Eleventh Circuit adopted a lenient formulation of this doctrine by providing that any judicial action prior to the expiration of the relevant time period for appeal that could have lulled the appellant into inactivity may permit application of the doctrine. Id. at 1529.
Corp., the court examined the effect of a premature notice of appeal and concluded that a notice of appeal that "is filed between the time of a decision or order and the time that the order is rendered appealable by the entry of judgment the otherwise premature notice of appeal is treated as if filed on the date of and after entry of judgment."79

In Hollins v. Department of Corrections, the court examined the applicability of an exception to the requirement of a timely notice of appeal. The appeal at issue was filed more than fourteen months after the district court's final order was entered. Appellant contended the court should hear his appeal despite his untimely notice because the district court's order never reached appellant or his counsel and because entry of the order was not reflected on the version of the docket appearing on the court's electronic system that allows litigants remote computer access to court records.81 In response to these arguments, the court first acknowledged a limited exception to the requirement of a timely notice of appeal, known as the unique circumstances doctrine, under which an appellant may maintain an untimely appeal if

"the appellant reasonably and in good faith relied upon judicial action that indicated to the appellant that his assertion of his right to appeal would be timely, so long as the judicial action occurred prior to the expiration of the official time period such that the appellant could have given timely notice had he not been lulled into inactivity."82

Furthermore, the court noted that it utilizes a "lenient formulation of the unique circumstances exception."83 In light of this, the court found appellant's reliance on the computer docket system constituted reasonable reliance on judicial action that justified the court's exercise of equitable power to excuse the untimely filing of the appeal.84

In Roberts v. Commissioner, the court examined the requirement of a timely notice of appeal in the bankruptcy context. Appellants filed a notice of appeal from a decision of the Tax Court more than ninety days after entry of the Tax Court order.86 Appellants argued that the

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78. 193 F.3d 1212 (11th Cir. 1999) (per curiam).
79. Id. at 1213. This is consistent with Rule 4(a)(2) of the Federal Rules of Appellate Procedure.
80. 191 F.3d 1324 (11th Cir. 1999).
81. Id. at 1325.
82. Id. at 1327 (quoting Willis v. Newsome, 747 F.2d 605, 606 (11th Cir. 1984)).
83. Id. (citing Pinion, 928 F.2d at 1531).
84. Id. at 1329.
85. 175 F.3d 889 (11th Cir. 1999).
86. Id. at 893. To obtain appellate review of a decision of the Tax Court, a party to that decision must file "a notice of appeal with the clerk of the Tax Court within 90 days
ninety-day period for filing a notice of appeal was stayed or sufficiently extended by virtue of several provisions of the Bankruptcy Code, which was applicable because of appellants' bankruptcy filing before the Tax Court's entry of judgment. Rejecting appellants' arguments, the court found that Sections 362(a)(1), 362(a)(8), and 108 of the Bankruptcy Code neither stayed nor sufficiently extended the ninety-day period, and appellants' notice of appeal was therefore untimely.

In Weaver v. Florida Power & Light Co., the court discussed the effect of a notice of appeal on the district court's jurisdiction. The court first noted the well-settled rule that "the filing of a notice of appeal divests the district court of jurisdiction over a case." The court also observed that the general rule regarding divestiture of jurisdiction "does not apply to collateral matters not affecting the questions presented on appeal." Because the direct appeal in Weaver involved the merits of appellant's claims of sex and handicap discrimination and was completely unrelated to the district court's postnotice entry of an injunction against appellant's pursuit of arbitration, the court held that the district court had jurisdiction to issue the injunction.

Just as the court generally cannot hear an untimely appeal, the court likewise usually declines to address issues not previously considered by the district court. Because this is a rule of practice and not a jurisdictional limitation, the court may exercise its discretion to depart from its usual practice in limited circumstances. For example, in

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after the decision of the Tax Court is entered." 26 U.S.C. § 7483 (1994).
87. 175 F.3d at 893.
88. Id.
89. 172 F.3d 771 (11th Cir. 1999).
90. Id. at 773.
91. Id.
92. Id.
93. Id. Although the district court had jurisdiction to hear arguments for the injunction, the court found that the district court abused its discretion by enjoining the arbitration proceedings. Id.
94. See, e.g., Inglesby, Falligant, Horne, Courington & Nash, P.C. v. Moore (In re American Steel Prod., Inc.), 197 F.3d 1354, 1357 (11th Cir. 1999) (declining to address the merits of whether debtor's attorney was entitled to compensation for professional services rendered to debtor prior to the appointment of the 'Chapter 11 trustee because the issue was not considered by the district court and the case did not present compelling circumstances warranting consideration of the issue even in the absence of the district court's consideration of the issue); Davis v. Carl Cannon Chevrolet-Olds, Inc., 182 F.3d 792, 798 (11th Cir. 1999) (declining to consider alternative grounds supporting diversity jurisdiction because the district court, in deciding that diversity jurisdiction applied on one basis, did not consider alternative grounds for the exercise of diversity jurisdiction).
95. Ochran v. United States, 117 F.3d 495, 502 (11th Cir. 1997). The purposes of this rule of practice include avoidance of prejudice to parties and judicial economy. Id. at 503.
Summit Medical Associates v. Pryor, the court permitted presentation of arguments raised for the first time on appeal because the issue was a "pure question of law" and because refusal to consider the issue "would result in a miscarriage of justice."

V. DOCTRINES OF STANDING, RIPENESS, JUSTICIABILITY, AND MOOTNESS

Article III of the federal Constitution confines federal courts to adjudicating only actual cases and controversies. This case-or-controversy requirement limits the power of federal courts to decide only those disputes that should be resolved through the judicial process, thereby permitting effective decisionmaking by the court.

One of the most important of these constitutionally based limits is the requirement that a litigant have standing to invoke the power of a federal court. Standing is a threshold test that, if satisfied, permits the court to proceed to other issues raised in a case. To establish standing, a plaintiff must have an injury in fact, there must be a causal connection between the injury and the challenged action that is not too attenuated, and the court must be able to redress the injury by a favorable decision.

The court in 1999 addressed the issue of a party's standing on numerous occasions. In Lady J. Lingerie, Inc. v. City of Jacksonville, appellants, adult entertainment establishments, challenged the constitutionality of city ordinances subjecting adult businesses "to various licensing, health and safety, and zoning regulations." Finding that none of appellants was injured because none had applied for a license for an affected site and because there was no evidence of

96. 180 F.3d 1326 (11th Cir. 1999).
97. Id. at 1341 n.12 (quoting Roofing & Sheet Metal Servs., Inc. v. LaQuinta Motor Inns, Inc., 689 F.2d 982, 989 (11th Cir. 1982)). The court permitted consideration of the issue of whether "[appelleees may challenge the private civil enforcement provision of the partial-birth abortion statute under the doctrine of Ex Parte Young, [209 U.S. 123 (1908)]."
98. See Malowney v. Federal Collection Deposit Group, 193 F.3d 1342, 1346 (11th Cir. 1999).
100. Georgia Advocacy Office, Inc. v. Camp, 172 F.3d 1294, 1299 (11th Cir. 1999).
101. Malowney, 193 F.3d at 1346.
103. Georgia State Conference of NAACP Branches, 183 F.3d at 1262.
104. 176 F.3d 1358 (11th Cir. 1999).
105. Id. at 1360.
any affected sites where the ordinance applied, the court rejected plaintiff's claim challenging a provision that made an applicant ineligible for an adult entertainment license if the sheriff had recently revoked a license for the same premises.\footnote{106} In contrast, with regard to a provision requiring corporate applicants for adult business licenses to disclose the names of principal stockholders, the court found that at least one appellant had standing to challenge this rule because it was a corporation and was therefore subject to the provision.\footnote{107}

The court also had occasion to consider standing issues in more novel situations. For example, in \textit{Vencor Hospitals v. Blue Cross Blue Shield of Rhode Island},\footnote{108} the court found that a hospital had standing to sue two patients' insurance provider when that provider failed to fully pay the patients' medical expenses as provided in those patients' insurance contracts.\footnote{109} The hospital had standing on the basis that it was a third-party beneficiary of the contracts, even though it was not a party to the contracts.\footnote{110}

\textit{Agripost, Inc. v. Miami-Dade County}\footnote{111} presented the court with the issue of whether the prevailing party in the district court may appeal the district court's decision. Ordinarily the prevailing party does not have standing to appeal because it is assumed that the favorable judgment has caused that party no injury.\footnote{112} An exception applies, however, "when the prevailing party is prejudiced by the collateral estoppel effect of the district court's order."\footnote{113} In \textit{Agripost} the court found this exception applicable to defendant Dade County because, even though the district court dismissed plaintiff's claim, the district court had first rejected the county's res judicata and collateral estoppel defenses.\footnote{114} Because the district court's action would preclude the county from raising those same defenses in a state court proceeding, the county had sufficient standing to appeal the case.\footnote{115}

The court faced the issue of association or organization standing on more than one occasion in 1999. To have standing to sue on behalf of its members, an association or organization must show that "(1) the members otherwise have standing to sue in their own right, (2) the
interests the association seeks to protect are germane to its purpose, and (3) neither the claim asserted nor the relief requested require the participation of individual members." An organization or association does not have to demonstrate injury to itself or show that a statute explicitly permits association or organization standing. In American Iron & Steel Institute v. Occupational Safety & Health Administration, the court found that the American College of Occupational and Environmental Medicine had standing to challenge a new standard for respiratory protection in the workplace. Contrarily, in Doe v. Stincer, the court found that the organization at issue, the Advocacy Center for Persons with Disabilities, did not have standing on the record before the court because it could not show that even one of its constituents had standing to sue.

Another case-and-controversy requirement under Article III of the federal Constitution that occasionally arose in 1999 cases of the Eleventh Circuit was ripeness. To resolve an issue of ripeness, the court must determine "whether there is sufficient injury to meet Article III's requirement of a case or controversy and, if so, whether the claim is sufficiently mature, and the issues sufficiently defined and concrete, to permit effective decisionmaking by the court." The ripeness doctrine prevents the court from dealing with abstractions that require sheer speculation. In Southeast Florida Cable, Inc. v. Martin County, Florida, the court found that plaintiff's Federal Cable Act claim alleged a fully ripe dispute as to whether the county had a duty to hold a public hearing at the party's request. In contrast, in Georgia Advocacy Office, Inc. v. Camp, the court found that plaintiff's general access claim pursuant to the Protection and Advocacy for Individuals with Mental Illness Act was not ripe for judicial review because plaintiff neither demonstrated sufficient injury nor a sufficiently mature claim.

117. Doe v. Stincer, 175 F.3d 879, 882 (11th Cir. 1999).
118. 182 F.3d 1261 (11th Cir. 1999).
119. Id. at 1274 n.10.
120. 175 F.3d 879 (11th Cir. 1999).
121. Id. at 886-87.
122. Southeast Fla. Cable, Inc. v. Martin County, Fla., 173 F.3d 1332, 1337 (11th Cir. 1999) (quoting Cheffer v. Reno, 55 F.3d 1517, 1524 (11th Cir. 1995)).
123. Gulf Power Co. v. United States, 187 F.3d 1324, 1338 (11th Cir. 1999).
124. 173 F.3d 1332 (11th Cir. 1999).
125. Id. at 1338.
126. 172 F.3d 1294 (11th Cir. 1999).
127. Id. at 1298-99.
Closely related to the issue of ripeness is another issue of justiciability—mootness. The court must refuse to hear an appeal if the issue is moot. 128 "A federal court has no authority to give opinions on moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." 129 A case is moot if the parties lack a legally cognizable interest in the outcome and intervening events have made it impossible to grant any effectual relief to the prevailing party. 130 In many instances the court's resolution of one issue on appeal renders moot another issue within the same case. For example, in Laker Airways, Inc. v. British Airways, PLC, 131 the court's determination that the district court correctly dismissed the case because of the absence of an indispensable party rendered moot one party's motion for relief from judgment. 132 However, when intervening events occur during the pendency of litigation that make the originally-sought relief impossible, and when there are alternative forms of relief still available, the court must carefully analyze whether to permit the plaintiff to amend the complaint pursuant to Rule 15 of the Federal Rules of Civil Procedure. 133

VI. STANDARDS OF REVIEW

Pursuant to the Eleventh Circuit Rules, a brief submitted to the court should contain a statement of the standard of review for each contention. 134 In most cases the court, in its published opinion, indicates the standard of review it is applying to each issue appealed. These standards are furnished here to assist practitioners with briefing related issues before the court. In 1999 the court detailed the applicable standards of review in the following contexts: review of a district court's

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129. Id. (citing John Roe, Inc. v. United States, 142 F.3d 1416, 1421 (11th Cir. 1998)).
130. Id.
131. 182 F.3d 843 (11th Cir. 1999).
132. Id. at 850-51; see also United States v. Georgia, Meriwether County, 171 F.3d 1344, 1346 n.2 (11th Cir. 1999) (denying plaintiffs' motion for summary reversal of the district court's order ruling that continued federal court supervision of Troup County School District was inappropriate because the motion was moot in light of the court's reversal of the district court's order); Rose v. M/V GULF STREAM FALCON, 186 F.3d 1345, 1351 (11th Cir. 1999) (finding a challenge to the district court's award mooted by the fact that the case had been remanded for another reason—recalculation of the lien amount); Sutton v. Lader, 185 F.3d 1203, 1211 n.9 (11th Cir. 1999) (finding the issue of attorney fees moot because of the court's resolution of the liability question).
133. McKinley v. Kaplan, 177 F.3d 1253, 1258 (11th Cir. 1999); see also supra notes 36-37 and accompanying text.
134. 11TH CIR. R. 28-2(h)(iii).
refusal to allow a plaintiff to amend its complaint based on the fact that
the amendment as proposed would be futile;\textsuperscript{136} review of a district
court's decision to disallow a jury demand and appoint a Rule 71A
commission to decide just compensation in eminent domain cases;\textsuperscript{136}
review of factual findings in bankruptcy proceedings;\textsuperscript{137} review of
conclusions of law in bankruptcy proceedings;\textsuperscript{138} review of a grant of
summary judgment;\textsuperscript{139} review of a district court's determination of
whether vote dilution has occurred;\textsuperscript{140} review of a decision to grant a
preliminary injunction order;\textsuperscript{141} review of questions of law supporting
the grant of a preliminary injunction order;\textsuperscript{142} review of findings of fact
supporting the grant of a preliminary injunction order;\textsuperscript{143} review of a
district court's denial of a motion for judgment as a matter of law;\textsuperscript{144}
review of a dismissal for failure to state a claim;\textsuperscript{145} review of the
application of res judicata as a basis for barring a claim;\textsuperscript{146} review of
the findings as to each factor in the analysis of whether there is a

\textsuperscript{135} St. Charles Foods, Inc. v. America's Favorite Chicken Co., 198 F.3d 815, 822 (11th
Cir. 1999) (de novo).

\textsuperscript{136} Southern Natural Gas Co. v. Land, 197 F.3d 1368, 1372 (11th Cir. 1999) (abuse
of discretion).

\textsuperscript{137} Ingleby, Falligant, Horne, Courington & Nash, P.C. v. Moore \textit{(In re American
Steel Prods., Inc.)}, 197 F.3d 1354, 1355 (11th Cir. 1999) (clear error); Kellogg v. Schreiber
\textit{(In re Kellogg)}, 197 F.3d 1116, 1119 (11th Cir. 1999) (clear error).

\textsuperscript{138} Ingleby, Falligant, Horne, Courington & Nash, 197 F.3d at 1355 (de novo);
Morgan v. United States \textit{(In re Morgan)}, 182 F.3d 775, 777 (11th Cir. 1999) (de novo).

\textsuperscript{139} Katz v. Comprehensive Plan of Group Ins., 197 F.3d 1084, 1088 (11th Cir. 1999)
de novo); Kirby v. Siegelman, 195 F.3d 1285, 1289 (11th Cir. 1999) (de novo); Watkins v.
Ford Motor Co., 190 F.3d 1213, 1216 (11th Cir. 1999) (de novo); Carnival Brand Seafood
Co. v. Carnival Brands, Inc., 187 F.3d 1307, 1309 (11th Cir. 1999) (de novo); Mitchell v.
USBI Co., 186 F.3d 1352, 1354 (11th Cir. 1999) (de novo); Crawford v. Babbit, 186 F.3d
1322, 1325 (11th Cir. 1999) (de novo); Allison v. McGhan Med. Corp., 184 F.3d 1300, 1306
(11th Cir. 1999) (de novo); American Mfg. Mut. Ins. Co. v. Tison Hog Mkt., Inc., 182 F.3d
1284, 1287 (11th Cir. 1999) (de novo); Kay v. Apfel, 176 F.3d 1322, 1324 (11th Cir. 1999)
de novo).

\textsuperscript{140} Johnson v. Hamrick, 196 F.3d 1216, 1219 (11th Cir. 1999) (clear error).

\textsuperscript{141} SEC v. Unique Fin. Concepts, Inc., 196 F.3d 1195, 1198 (11th Cir. 1999) (abuse
of discretion).

\textsuperscript{142} Id. (de novo).

\textsuperscript{143} Id. (clear error).

\textsuperscript{144} Mendoza v. Borden, Inc., 195 F.3d 1238, 1244 (11th Cir. 1999) (de novo); Stimpson
v. City of Tuscaloosa, 186 F.3d 1298, 1311 (11th Cir. 1999) (de novo); Clover v. Total Sys.
Servs., Inc., 176 F.3d 1346, 1350 (11th Cir. 1999) (de novo).

\textsuperscript{145} United States v. Pemco Aeroplex, Inc., 195 F.3d 1234, 1236 (11th Cir. 1999)
de novo); Dunn v. Air Line Pilots Ass'n, 193 F.3d 1185, 1190 (11th Cir. 1999) (de novo); Long

\textsuperscript{146} Ragsdale v. Rubbermaid, Inc., 193 F.3d 1235, 1238 (11th Cir. 1999) (de novo).
likelihood of confusion between trademarks;\textsuperscript{147} review of the ultimate conclusion regarding whether there is a likelihood of confusion between trademarks;\textsuperscript{148} review of an award of attorney fees;\textsuperscript{149} review of a determination of a statute's constitutionality;\textsuperscript{150} review of a dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure;\textsuperscript{151} review of a federal agency's factual determinations underlying its regulations;\textsuperscript{152} review of issues of subject matter jurisdiction;\textsuperscript{153} review of the Board of Immigration Appeals denial of a motion to reopen deportation proceedings;\textsuperscript{154} review of the district court's order compelling arbitration;\textsuperscript{155} review of the NLRB's factual determinations;\textsuperscript{156} review of the issue of a government official's qualified immunity from suit;\textsuperscript{157} review of the district court's denial of a motion to set aside a final judgment;\textsuperscript{158} review of the applicability of the functionality doctrine to a trademark that is the subject of an incontestable registration;\textsuperscript{159} review of questions of statutory interpretation;\textsuperscript{160} review of the district court's findings of jurisdictional facts;\textsuperscript{161} review of the district court's dismissal of claims;\textsuperscript{162} review of the district court's decision to exclude expert testimony under Rule 702 of the Federal Rules of Evidence;\textsuperscript{163} review of a district court's decision to vacate an arbitrato-

\textsuperscript{147} Frehling Enters. v. International Select Group, 192 F.3d 1330, 1335 (11th Cir. 1999) (clearly erroneous).
\textsuperscript{148} Id. (clearly erroneous).
\textsuperscript{149} Waters v. International Precious Metals Corp., 190 F.3d 1291, 1293 (11th Cir. 1999) (abuse of discretion); ACLU of Ga. v. Barnes, 168 F.3d 423, 427 (11th Cir. 1999) (abuse of discretion).
\textsuperscript{150} Gulf Power Co. v. United States, 187 F.3d 1324, 1328 (11th Cir. 1999) (de novo).
\textsuperscript{151} Canadyne-Georgia Corp. v. NationsBank, N.A., 183 F.3d 1269, 1272 (11th Cir. 1999) (de novo).
\textsuperscript{152} American Iron & Steel Inst. v. OSHA, 182 F.3d 1261, 1267 (11th Cir. 1999) (substantial evidence considered as a whole).
\textsuperscript{153} Tefel v. Reno, 180 F.3d 1286, 1295 (11th Cir. 1999) (de novo).
\textsuperscript{154} Rodriguez v. Reno, 178 F.3d 1139, 1144-45 (11th Cir. 1999) (abuse of discretion).
\textsuperscript{156} Cooper/T. Smith, Inc. v. NLRB, 177 F.3d 1259, 1261 (11th Cir. 1999) (substantial evidence).
\textsuperscript{157} Sanders v. Howze, 177 F.3d 1245, 1248 (11th Cir. 1999) (de novo).
\textsuperscript{158} Walter v. Blue Cross & Blue Shield United of Wis., 181 F.3d 1198, 1201 (11th Cir. 1999) (abuse of discretion).
\textsuperscript{159} Pudenz v. Littlefuse, Inc., 177 F.3d 1204, 1207 (11th Cir. 1999) (de novo).
\textsuperscript{160} Kay v. Apfel, 176 F.3d 1322, 1324 (11th Cir. 1999) (de novo).
\textsuperscript{161} Scarfo v. Ginsberg, 175 F.3d 957, 960 (11th Cir. 1999) (clear error).
\textsuperscript{162} Id. (abuse of discretion).
\textsuperscript{163} United States v. Paul, 175 F.3d 906, 909 (11th Cir. 1999) (abuse of discretion).
review of a damages award under the Federal Tort Claims Act;\textsuperscript{165} review of the district court's rulings on discovery;\textsuperscript{166} review of a judgment on the pleadings;\textsuperscript{167} and review of the district court's ruling on the issue of a sovereign's immunity from suit.\textsuperscript{168}

\textsuperscript{165} Whitley v. United States, 170 F.3d 1061, 1079 (11th Cir. 1999) (clearly erroneous).
\textsuperscript{166} Burger King Corp. v. Weaver, 169 F.3d 1310, 1315 (11th Cir. 1999) (abuse of discretion).
\textsuperscript{167} Merges v. Dreyfoos, 166 F.3d 1114, 1116 (11th Cir. 1999) (de novo).
\textsuperscript{168} Florida Paraplegic Ass'n v. Miccosukee Tribe of Indians of Fla., 166 F.3d 1126, 1128 (11th Cir. 1999) (de novo).