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**Indicative Rulings under
Federal Rule of Civil Procedure 62.1 and
Federal Rule of Appellate Procedure 12.1**

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INDICATIVE RULINGS UNDER FRCP 62.1 AND FRAP 12.1

I. Introduction

After an appeal has been docketed and while it remains pending, the district court cannot grant a Civil Rule 60(b) motion for relief from judgment without a remand. FED. R. CIV. P. 62.1 advisory committee's note (2009). But sometimes parties need to seek relief from the district court that the court can no longer grant because of the pending appeal.

Federal Rule of Civil Procedure 62.1—and its counterpart, Federal Rule of Appellate Procedure 12.1—formalized the developed practice that most courts followed to navigate this jurisdictional problem. The problem typically arises between district and appellate courts when a party makes a motion under Federal Rule of Civil Procedure 60(b) for relief from a judgment or order that is pending on appeal. *Lopez Dominguez v. Gulf Coast Marine & Assocs., Inc.*, 607 F.3d 1066, 1074 n.5 (5th Cir. 2010). Although the indicative-ruling procedure codified the practice that had developed for Civil Rule 60(b) motions, the procedure is not limited to that context.

In considering the adoption of these rules, the Rules Advisory Committee noted that the indicative-ruling practice—by then “well established”—“is not explicit in the current rules and is often overlooked by lawyers. Moreover, some district judges are unaware of its existence.”¹ Despite the adoption of indicative-ruling mechanism in Civil Rule 62.1 and Appellate Rule 12.1 in 2009, many practitioners remain unaware of this helpful tool.

¹ U.S. Courts Rules Advisory Standing Committee on Rules of Practice and Procedure, Meeting Minutes at 17 (Jan. 11-12, 2007), available at https://www.uscourts.gov/sites/default/files/fr_import/ST01-2007-min.pdf; see U.S. Courts Civil Rules Advisory Committee, Meeting Minutes at 30 (May 22-23, 2006 (“Although the practice is well settled under Rule 60(b), . . . expressing it in a rule” would “give clear notice of a practice that remains unfamiliar to many lawyers and to at least a few judges.”), available at https://www.uscourts.gov/sites/default/files/fr_import/CV05-2006-min.pdf.

II. Overview

Civil Rule 62.1 was considered by its drafters to be “the most important rule in the package being forwarded to the Judicial Conference for approval.”² Similarly, commentators have said that “Rule 62.1 serves a narrow but sometimes important purpose.”³ District courts typically lose power to grant a motion for relief from judgment once an appeal has been taken. *See Wooten v. Roach*, 964 F.3d 395, 403 (5th Cir. 2020); *Moore v. Tangipahoa Par. Sch. Bd.*, 836 F.3d 503, 504 (5th Cir. 2016).

“On occasion,” though, “district courts are presented with compelling grounds to grant relief but lack the power to do so because jurisdiction over the matter in question has passed to the court of appeals.” GENSLER & MULLIGAN, *supra* note 3. “In some circumstances, the most sensible and efficient path forward is for the court of appeals to be apprised of the situation so it may elect to terminate its proceedings and remand the case to the district court for further action.” *Id.*

Enter Federal Rule of Civil Procedure 62.1, alongside Federal Rule of Appellate Procedure 12.1. Civil Rule 62.1 “introduces a structured dialogue between the trial court and the appellate court,”⁴ setting out what actions a court can take when a party seeks relief in the district court that it cannot grant because it has lost jurisdiction as a result of an appeal. The most obvious use

² U.S. Courts Rules Advisory Standing Committee on Rules of Practice and Procedure, Meeting Minutes at 13-14 (June 9-10, 2008), *available at* https://www.uscourts.gov/sites/default/files/fr_import/ST06-2008-min.pdf.

³ 2 STEVEN S. GENSLER & LUMEN N. MULLIGAN, FEDERAL RULES OF CIVIL PROCEDURE, RULES, AND COMMENTARY: *Rule 62.1—Indicative Ruling on a Motion for Relief That is Barred by a Pending Appeal* (Feb. 2023 update).

⁴ U.S. Courts Civil Rules Advisory Committee, Meeting Minutes at 30 (May 22-23, 2006), *available at* https://www.uscourts.gov/sites/default/files/fr_import/CV05-2006-min.pdf.

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