CARLTON FIELDS

Pencils Down? Tell the Court!

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Your firm is five years into a bet-the-company suit. Trial has come and gone, and multiple parties have appealed. After a week of intense negotiations, you send a mass email to your team: "Pencils down everyone! We've settled." Congratulations are circulated, payment terms are finalized, releases are signed … Meanwhile, the appellate court labors over the final portions of its opinion, issuing it months later. The Eleventh Circuit, in a published order, recently reminded litigants that courts do not take kindly to this scenario. In *Laufer v. Arpan LLC*, the court admonished the parties for waiting 15 months after the court issued its opinion to notify it that the appeal was moot (and had been when the opinion was issued): "We aren't happy about being left in the dark for so long; we expect more from litigants and, in particular, their lawyers." Nevertheless, the court agreed the case was moot and vacated its prior opinion. The Eleventh Circuit is not alone in its frustration, as demonstrated by a Florida appellate court order dismissing an appeal after similarly untimely notice: "Counsel are reminded of their obligation to promptly notify the court 'of any development that may conceivably affect the outcome of the litigation, including facts that may raise a question of mootness.'" *J.B. v. State, Dep't of Child. & Fam. Servs.*, 29 So. 3d 300 (Fla. 2d DCA 2010) (citation omitted). In fact, in some jurisdictions, such untimely notice constitutes a clear violation of applicable rules. Florida Rule of Appellate Procedure 9.350(a), for example, provides that "[w]hen any cause pending in the court is settled before a decision on the merits, the parties shall immediately notify the court by filing a signed stipulation for dismissal." In some cases, the consequences for such lack of notice may go beyond a scolding from the bench. Consider the Florida Supreme Court's opinion in *Pino v. Bank of New York*, in which the court opted to hear a case despite the parties having filed a joint stipulated dismissal before the appellee served its answer brief. The case involved a certified question of "great public importance," and the court felt that the public's interest in having this question answered was sufficient to warrant seeing the case through, despite the parties' private interests having been resolved. While there was no issue as to timely notice in *Pino*, early notice of mootness (preferably, before the court takes the issues and runs with them) can only help the parties' chances of avoiding a similar outcome. So the next time one of your appeals approaches settlement, add an item to your checklist: Don't forget to tell the court.

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