

**POST-JUDGMENT MOTIONS IN STATE AND FEDERAL COURTS**

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Mr. Echols focuses his practice on civil appeals, including state and federal appeals, writ petitions, and petitions for judicial review of agency decisions. Since joining Marquis Aurbach Coffing, Mr. Echols has participated in the briefing or argument for over 175 appellate matters. He has argued cases in both the Nevada Supreme Court and the Ninth Circuit. Clients and other attorneys often consult Mr. Echols for his knowledge of appellate procedure and preserving issues in the District Court for appeal. His appellate successes include reversals of jury verdicts, reversals of non-jury trials, obtaining extraordinary writ relief, and obtaining appellate decisions upholding favorable rulings for his clients. Mr. Echols holds an AV Preeminent rating from Martindale-Hubbell and has been recognized by Super Lawyers for his appellate practice.

## COMMON POST-JUDGMENT MOTIONS AND THEIR DEADLINES

### State

Motions for Attorney Fees. In contrast to the memorandum of costs, which must be filed within five days after the entry of judgment, NRCP 54(d)(2)(B) requires a motion for attorney fees to be filed within 20 days after the notice of entry of judgment is served. This rule also suggests that the deadline to file the motion for attorney fees is jurisdictional: “The time for filing the motion may not be extended by the court after it has expired.” For purposes of counting days, the Nevada Supreme Court has clarified NRCP 6(a) and held that when a deadline is less than 11 days, judicial days are counted first and then any days for service are added as calendar days. *Winston Prods. Co. v. DeBoer*, 122 Nev. 517, 134 P.3d 726 (2006).

Motions for Reconsideration. A motion for reconsideration/rehearing filed under the authority of EDCR 2.24, or other similar local rules, such as DCR 13, must be filed within 10 days after service of the notice of the order or judgment. If a motion for reconsideration functionally operates as an NRCP 59(e) motion to alter or amend, the motion for reconsideration will be given tolling effect. *AA Primo Builders, LLC v. Washington*, 245 P.3d 1190 (Nev. 2010). A motion for reconsideration can be used to raise new issues for the first time. *Arnold v. Kip*, 123 Nev. 410, 168 P.3d 1050 (2007).

Motions for Relief from Judgment. A motion for relief from judgment filed according to NRCP 60(b) must be filed within six months unless some exception to the rule applies, such as (1) the act complained of constitutes fraud upon the court, in which case there is no six-month deadline (*NC-DSH, Inc. v. Garner*, 218 P.3d 853 (Nev. 2009)); (2) the judgment is void (NRCP 60(b)(4)); or (3) the judgment has been satisfied, released, discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that an injunction should have prospective application. NRCP 60(b)(5). Rule 60 motions do not have a tolling effect. *Chapman Indus. v. United Ins. Co. of Am.*, 110 Nev. 454, 874 P.2d 739 (1994). And, the perfection of an appeal to the Supreme Court does not toll the time to request relief under NRCP 60. *Foster v. Dingwall*, 228 P.3d 453, 457 (Nev. 2010). Rule 60 motions cannot be used to raise new legal issues. *Ford v. Branch Banking and Trust Co.*, 353 P.3d 1200 (Nev. 2015).

Motions for Stay. According to the terms of NRCP 62(a), there is an automatic stay of most orders and judgments of 10 days following service of written notice of its entry. While there is no firm deadline to file a motion for stay, it should be done prior to the execution of the order or judgment. Even government entities have to obtain a stay pending appeal, which is a separate inquiry from the sufficiency of the supersedeas bond. *State ex rel. Pub. Serv. Comm'n v. Dist. Ct.*, 94 Nev. 42, 574 P.2d 272 (1978). NRCP 62(e) exempts government entities from a bond requirement for a stay pending appeal.

Post-Judgment Tolling Motions. NRAP 4(a)(4) identifies the four recognized types of tolling motions: (1) a motion for judgment under Rule 50(b); (2) a motion under Rule 52(b) to amend or make additional findings of fact; (3) a motion under Rule 59 to alter or amend the judgment; and (4) a motion for a new trial under Rule 59. According to NRCP 50(b), 52(b), and 59, these tolling motions must be filed within 10 days after service of the written notice of entry of the judgment or order. A tolling motion can be taken from any appealable order. A tolling motion has a tolling effect on any appealable order, not just a judgment. *See Lytle v. Rosemere Estates Prop. Owners Ass'n*, 314 P.3d 946 (Nev. 2013).

### **Federal**

Motions for Attorney Fees. According to FRCP 54(d), a motion for attorney fees must be filed within 14 days of the judgment. Note that in federal courts, there is no “notice of entry of judgment.” So, all deadlines run from the entry of judgment. *Cf.* NRCP 58.

Motions for Reconsideration. A motion for reconsideration is not officially recognized by the federal rules. But, courts generally treat a motion for reconsideration as its functional equivalent. A motion for reconsideration that is filed within 28 days of the judgment and attacks the judgment will generally be treated as an FRCP 59(e) motion to alter or amend judgment. *Schroeder v. McDonald*, 55 F.3d 454, 459 (9th Cir. 1995). If the motion for reconsideration functionally operates as an NRCP 60 motion, or is filed after the 28 days, the

motion for reconsideration will often be treated as an FRCP 60 motion. *See Hasbrouck v. Texaco, Inc.*, 879 F.2d 632 (9th Cir. 1989).

Motions for Relief from Judgment. Rule 60 motions must be filed within a reasonable time but no more than a year after the entry of judgment. FRCP 60 largely follows NRCP 60, but has an additional element: “(6) any other reason that justifies relief.” The Nevada Supreme Court has commented on both this federal standard and the corresponding Nevada standard for an independent action as being extremely difficult to meet. *Bonnell v. Lawrence*, 282 P.3d 712 (Nev. 2012).

Motions for Stay. In federal court, the automatic stay of FRCP 62(a) is 14 days after entry. Like the NRCP, there is no time limit for requesting a stay, but it should be done before execution. Please note that FRCP 62(e) does not apply to state government entities. A state government entity may, however, be able to qualify for a stay pending appeal without a bond if it can demonstrate its security. *See* NRS 20.040.

Post-Judgment Tolling Motions. In federal courts, tolling motions are due within 28 days of the entry of judgment. FRAP 4(a)(4)(A) lists the tolling motions: (1) for judgment under Rule 50(b); (2) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment; (3) for attorney’s fees under Rule 54 if the district court extends the time to appeal under Rule 58; (4) to alter or amend the judgment under Rule 59; (5) for a new trial under Rule 59; or (6) for relief under Rule 60 if the motion is

filed no later than 28 days after the judgment is entered. A tolling motion can be filed before the entry of judgment, and it will still carry a tolling effect. *See Larez v. City of Los Angeles*, 946 F.2d 630 (9th Cir. 1991). A tolling motion may be directed to any appealable order. *See Balla v. Idaho State Bd. of Corrs.*, 869 F.2d 461 (9th Cir. 1989).

## **TOLLING EFFECT OF CERTAIN POST-JUDGMENT MOTIONS**

### **State**

Once any party timely files a tolling motion, the time to appeal is suspended for all parties to the litigation. NRAP 4(a)(4). The 30-day period to appeal from the judgment or any appealable post-trial order begins to run again after service of notice of entry of the last remaining post-trial order that decides a tolling motion. *Id.* While a motion for attorney fees is not a tolling motion, if such a motion is filed during the pendency of other motions that are tolling, the time to file an appeal from the order resolving the attorney fees motion runs at the same time as the order that decided the last tolling motions. *Winston Prods. Co. v. DeBoer*, 122 Nev. 517, 134 P.3d 726 (2006). Since a tolling motion suspends the finality of a judgment for purposes of appealing that judgment, the 20-day deadline in NRCP 54(d)(2)(B) to file a motion for attorney fees in the district court does not begin until after notice of entry of the order resolving the tolling motion. *Barbara Ann Hollier Trust v. Shack*, 356 P.3d 1085 (Nev. 2015).

## **Federal**

If a party timely files a tolling motion in the district court, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion. FRAP 4(a)(4)(A); *McCarthy v. Mayo*, 827 F.2d 1310 (9th Cir. 1987). If a party files a notice of appeal after the court announces or enters a judgment (but before it disposes of a pending tolling motion), the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered. FRAP 4(a)(4)(B)(i). Thus, a notice of appeal filed while a timely post-judgment tolling motion is pending is “held in abeyance until the motion is resolved.” *Leader Nat’l Ins. Co. v. Indus. Indemnity Ins. Co.*, 19 F.3d 444, 445 (9th Cir. 1994).

## **APPEALABILITY OF CERTAIN POST-JUDGMENT ORDERS**

### **State Courts**

Orders granting or denying a new trial. NRAP 3A(b)(2) authorizes an appeal from an order granting or denying a motion for a new trial, if aggrieved. However, this rule is limited to motions that request a new trial following a final, appealable order. *Reno Hilton Resort Corp. v. Verderber*, 121 Nev. 1, 106 P.3d 134 (2005). An order that resolves a motion for new trial on an interlocutory judgment or order is not appealable. *See id.*

Orders related to garnishment proceedings. While an order granting or denying a stay of execution of a judgment is not specifically appealable, the final judgment resulting from the garnishment proceedings is an appealable order under NRAP 3A(a) and (b)(1) pertaining to final judgments. *See Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 197 P.3d 1051 (2008) (referencing NRS 31.460: “[A]ppeals may be taken and prosecuted from any final judgment or order in such proceedings as in other civil cases.”).

Special orders after entry of final judgment. NRAP 3A(b)(8) allows for appeal from certain special orders entered after the final judgment. This includes orders resolving attorney fees and costs. *See Thomas v. City of N. Las Vegas*, 122 Nev. 82, 127 P.3d 1057 (2006); *Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000).

Orders denying NRCP 60 request for relief from judgment. When a motion to set aside a judgment is based upon NRCP 60(b), the order denying this motion is appealable. *See Ford v. Branch Banking & Trust Co.*, 353 P.3d 1200 (Nev. 2015).

Orders setting aside judgment/default judgment. An order granting a motion to modify or set aside a judgment is appealable under NRAP 3A(b)(8). *Dobson v. Dobson*, 108 Nev. 346, 830 P.2d 1336 (1992). An order granting a motion to set aside a default judgment pursuant to NRCP 60(b)(1), if the motion to set aside the default judgment was filed and served within 60 days of entry of the default judgment, is not appealable. NRAP 3A(b)(8). Therefore, an order granting a

motion to set aside a default judgment, when the motion is filed after the 60-day period, is specifically appealable. *Lindblom v. Prime Hospitality Corp.*, 120 Nev. 372, 90 P.3d 1283 (2004).

Denial of motions to alter or amend judgment/or for additional findings of fact. But, when the motion is based upon NRCP 59(e) (alter or amend judgment) or NRCP 52(b) (amend or make additional findings of fact), the order is not independently appealable. *See Casino Operations, Inc. v. Graham*, 86 Nev. 764, 476 P.2d 953, 954-55 (1970). However, appellate courts will often “review” such orders in the context of a final judgment. *See AA Primo Builders, LLC v. Washington*, 245 P.3d 1190 (Nev. 2010) (reviewing the denial of an NRCP 59(e) motion in a final judgment appeal).

Don't wait for an amended judgment to appeal. If an appealable order or judgment is not timely appealed because the aggrieved party awaited the district court's entry of a separate judgment, the aggrieved party loses its appeal rights. *Campos-Garcia v. Johnson*, 331 P.3d 890 (Nev. 2014).

### **Federal Courts**

Attorney fees and costs orders. An order granting or denying a post-judgment motion for attorney's fees is generally an appealable final order. *See United States ex rel. Familian Northwest, Inc. v. RG & B Contractors, Inc.*, 21 F.3d 952 (9th Cir. 1994). But, an award of attorney's fees does not become final until the amount of the fee award is determined. *Intel Corp. v. Terabyte Int'l*,

*Inc.*, 6 F.3d 614 (9th Cir. 1993). A post-judgment order granting or denying a motion for costs is final and appealable. *See Burt v. Hennessey*, 929 F.2d 457 (9th Cir. 1991).

Orders granting or denying new trial. An order conditionally granting or denying a motion for new trial under FRCP 50(c) or (d) is reviewable in conjunction with an appeal from the grant or denial of a renewed motion for judgment as a matter of law under FRCP 50(b). *See Neely v. Martin K. Elby Constr. Co.*, 386 U.S. 317 (1967).

Orders granting or denying FRCP 60 relief. An order granting or denying relief under FRCP is final and appealable. *See Harman v. Harper*, 7 F.3d 1455 (9th Cir. 1993).

Finality and “two” final judgments. Federal courts often attribute an expansive meaning of “final judgment” to post-judgment proceedings and afford such orders the status of being independently appealed or reviewed within an appeal from the final judgment. A post-judgment order may be final and appealable “(1) as an ‘integral part’ of the final judgment on the merits even though not entered concurrently with that judgment; (2) as an independent final order in a single case involving two ‘final’ decisions; or (3) as a collateral interlocutory order subject to immediate review if it is viewed as preliminary to a later proceeding.” *United States v. One 1986 Ford Pickup*, 56 F.3d 1181 (9th Cir.

1995). Permitting immediate appeal of post-judgment orders creates little risk of piecemeal review and may be the only opportunity for meaningful review. *Id.*