Fed. R. Civ. P. 59

Rule 59 - New Trial; Altering or Amending a Judgment

(a) IN GENERAL.

(1) *Grounds for New Trial.* The court may, on motion, grant a new trial on all or some of the issues-and to any party-as follows:

(A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court; or

(B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.

(2) *Further Action After a Nonjury Trial.* After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(b) TIME TO FILE A MOTION FOR A NEW TRIAL. A motion for a new trial must be filed no later than 28 days after the entry of judgment.

(c) TIME TO SERVE AFFIDAVITS. When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.

(d) NEW TRIAL ON THE COURT'S INITIATIVE OR FOR REASONS NOT IN THE MOTION. No later than 28 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(e) MOTION TO ALTER OR AMEND A JUDGMENT. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

28 APPENDIX U.S.C. § 59

As amended Dec. 27, 1946, eff. Mar. 19, 1948; Feb. 28, 1966, eff. July 1, 1966; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.

NOTES OF ADVISORY COMMITTEE ON RULES-1937 *This rule represents an amalgamation of the petition for rehearing of [former] Equity Rule 69 (Petition for Rehearing) and the motion for new trial of U.S.C., Title 28, §391 [see 2111] (New trials; harmless error), made in the light of the experience and provision of the code States. Compare Calif.Code Civ.Proc. (Deering, 1937) §§656-663a, U.S.C., Title 28, §391 [see 2111] (New trials; harmless error) is thus substantially continued in this rule. U.S.C., Title 28, [former] §840 (Executions; stay on conditions) is modified insofar as it contains time provisions inconsistent with Subdivision (b). For the effect of the motion for new trial upon the time for taking an appeal see Morse v. United States, 270 U.S. 151 (1926); Aspen Mining and Smelting Co. v. Billings, 150 U.S. 31 (1893).For partial new trials which are permissible under Subdivision (a), see Gasoline Products Co., Inc., v. Champlin Refining Co., 283 U.S. 494 (1931); Schuerholz v. Roach, 58 F.(2d) 32 (C.C.A.4th, 1932); Simmons v. Fish, 210 Mass. 563, 97 N.E. 102, Ann.Cas.1912D, 588 (1912) (sustaining and recommending the practice*

and citing Federal cases and cases in accord from about sixteen States and contra from three States). The procedure in several States provides specifically for partial new trials. Ariz.Rev.Code Ann. (Struckmeyer, 1928) §3852; Calif.Code Civ.Proc. (Deering, 1937) §§657, 662; Ill.Rev.Stat. (1937) ch. 110, §216 (par. (f)); Md.Ann.Code (Bagby, 1924) Art. 5, §§25, 26; Mich.Court Rules Ann. (Searl, 1933) Rule 47, §2; Miss.Sup.Ct. Rule 12, 161 Miss. 903, 905 (1931); N.J.Sup.Ct. Rules 131, 132, 147, 2 N.J.Misc. 1197, 1246-1251, 1255 (1924); 2 N.D.Comp.Laws Ann. (1913), §7844, as amended by N.D.Laws 1927, ch. 214.

NOTES OF ADVISORY COMMITTEE ON RULES-1946 AMENDMENT*Subdivision (b). With the time for appeal to a circuit court of appeals reduced in general to 30 days by the proposed amendment of Rule 73(a), the utility of the original "except" clause, which permits a motion for a new trial on the ground of newly discovered evidence to be made before the expiration of the time for appeal, would have been seriously restricted. It was thought advisable, therefore, to take care of this matter in another way. By amendment of Rule 60(b), newly discovered evidence is made the basis for relief from a judgment, and the maximum time limit has been extended to one year. Accordingly the amendment of Rule 59(b) eliminates the "except" clause and its specific treatment of newly discovered evidence as a ground for a motion for new trial. This ground remains, however, as a basis for a motion for new trial served not later than 10 days after the entry of judgment. See also Rule 60(b).As to the effect of a motion under subdivision (b) upon the running of appeal time, see amended Rule 73(a) and Note. Subdivision (e). This subdivision has been added to care for a situation such as that arising in Boaz v. Mutual Life Ins. Co. of New York (C.C.A.8th, 1944) 146 F.(2d) 321, and makes clear that the district court possesses the power asserted in that case to alter or amend a judgment after its entry. The subdivision deals only with alteration or amendment of the original judgment in a case and does not relate to a judgment upon motion as provided in Rule 50(b). As to the effect of a motion under subdivision (e) upon the running of appeal time, see amended Rule 73(a) and Note. The title of Rule 59 has been expanded to indicate the inclusion of this subdivision.*

NOTES OF ADVISORY COMMITTEE ON RULES-1966 AMENDMENT*By narrow interpretation of Rule 59(b) and (d), it has been held that the trial court is without power to grant a motion for a new trial, timely served, by an order made more than 10 days after the entry of judgment, based upon a ground not stated in the motion but perceived and relied on by the trial court sua sponte. Freid v. McGrath, 133 F.2d 350 (D.C.Cir. 1942); National Farmers Union Auto. & Cas. Co. v. Wood, 207 F.2d 659 (10th Cir. 1953); Bailey v. Slentz, 189 F.2d 406 (10th Cir. 1951); Marshall's U.S. Auto Supply, Inc. v. Cashman, 111 F.2d 140 (10th Cir. 1940), cert. denied, 311 U.S. 667 (1940); but see Steinberg v. Indemnity Ins. Co., 36 F.R.D. 253 (E.D.La. 1964).The result is undesirable. Just as the court has power under Rule 59(d) to grant a new trial of its own initiative within the 10 days, so it should have power, when an effective new trial motion has been made and is pending, to decide it on grounds thought meritorious by the court although not advanced in the motion. The second sentence added by amendment to Rule 59(d) confirms the court's power in the latter situation, with provision that the parties be afforded a hearing before the power is exercised. See 6 Moore's Federal Practice, par. 59.09[2] (2d ed. 1953).In considering whether a given ground has or has not been advanced in the motion made by the party, it should be borne in mind that the particularity called for in stating the grounds for a new trial motion is the same as that required for all motions by Rule 7(b)(1). The latter rule does not require ritualistic detail but rather a fair indication to court and counsel of the substance of the grounds relied on. See Lebeck v. William A. Jarvis Co., 250 F.2d 285 (3d Cir. 1957); Tsai v. Rosenthal, 297 F.2d 614 (8th Cir. 1961); General Motors Corp. v. Perry, 303 F.2d 544 (7th Cir. 1962); cf. Grimm v. California Spray-Chemical Corp., 264 F.2d 145 (9th Cir. 1959); Cooper v. Midwest Feed Products Co., 271 F.2d 177 (8th Cir. 1959).*

NOTES OF ADVISORY COMMITTEE ON RULES-1995 AMENDMENT*The only change, other than stylistic, intended by this revision is to add explicit time limits for filing motions for a new trial, motions to alter or amend a judgment, and affidavits opposing a new trial motion. Previously, there was an inconsistency in the wording of Rules*

50, 52, and 59 with respect to whether certain post-judgment motions had to be filed, or merely served, during the prescribed period. This inconsistency caused special problems when motions for a new trial were joined with other post-judgment motions. These motions affect the finality of the judgment, a matter often of importance to third persons as well as the parties and the court. The Committee believes that each of these rules should be revised to require filing before end of the 10-day period. Filing is an event that can be determined with certainty from court records. The phrase "no later than" is used-rather than "within"-to include post-judgment motions that sometimes are filed before actual entry of the judgment by the clerk. It should be noted that under Rule 5 the motions when filed are to contain a certificate of service on other parties. It also should be noted that under Rule 6(a) Saturdays, Sundays, and legal holidays are excluded in measuring the 10-day period, but that Bankruptcy Rule 9006(a) excludes intermediate Saturdays, Sundays, and legal holidays only in computing periods less than 8 days.

COMMITTEE NOTES ON RULES-2007 AMENDMENT *The language of Rule 59 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.*

COMMITTEE NOTES ON RULES-2009 AMENDMENT *Former Rules 50, 52, and 59 adopted 10-day periods for their respective post-judgment motions. Rule 6(b) prohibits any expansion of those periods. Experience has proved that in many cases it is not possible to prepare a satisfactory post-judgment motion in 10 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. These time periods are particularly sensitive because Appellate Rule 4 integrates the time to appeal with a timely motion under these rules. Rather than introduce the prospect of uncertainty in appeal time by amending Rule 6(b) to permit additional time, the former 10-day periods are expanded to 28 days. Rule 6(b) continues to prohibit expansion of the 28-day period.Former Rule 59(c) set a 10-day period after being served with a motion for new trial to file opposing affidavits. It also provided that the period could be extended for up to 20 days for good cause or by stipulation. The apparent 20-day limit on extending the time to file opposing affidavits seemed to conflict with the Rule 6(b) authority to extend time without any specific limit. This tension between the two rules may have been inadvertent. It is resolved by deleting the former Rule 59(c) limit. Rule 6(b) governs. The underlying 10-day period was extended to 14 days to reflect the change in the Rule 6(a) method for computing periods of less than 11 days.Changes Made after Publication and Comment. The 30-day period proposed in the August 2007 publication is shortened to 28 days.*