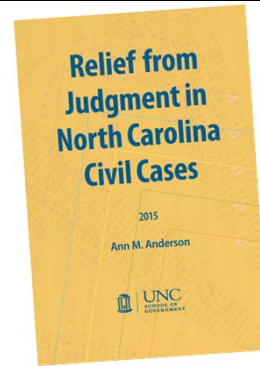


Post-judgment Motions

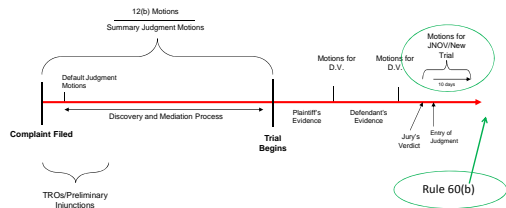


Ann M. Anderson
 Appellate Training: New and Emerging Legal Issues
 December 12, 2018
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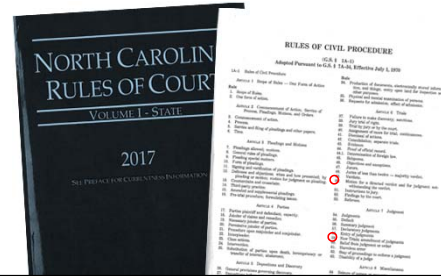


- JNOV (Rule 50)
- New Trial (Rule 59)
 - Amendment of Judgment (Rule 52/59)
- Relief from Judgment (Rule 60(b))

A Civil Case



JNOV and New Trial Rules 50, 59



JNOV and New Trial



Standard: Evidence of plaintiff provides no basis for jury to decide in plaintiff's favor. (There's not "more than a scintilla of evidence" in plaintiff's favor.)

JNOV and New Trial



Standard: After all evidence, no basis in evidence for jury to decide in favor of non-movant. (Again, there's not "more than a scintilla of evidence" in non-movant's favor.)

This motion is necessary in order to preserve right to move for JNOV.

JNOV and New Trial



Standard: Same as directed verdict. (It is a "renewal" of the directed verdict motion.)

Must be made within 10 days of entry of judgment.

Court may also grant JNOV on own motion (same 10-day deadline)

Nags Head v. Richardson (COA July 2018)

Town filed condemnation of temporary easement for beach renourishment.

Jury verdict: 60K for value of easement

Trial court granted JNOV (on own motion, sort of) after concluding that Town was already entitled to access through the public trust doctrine. (See *...* p. 24)

COA: REVERSED.
 JNOV is a *renewal* of a directed verdict motion. No JNOV on grounds *not asserted* by the movant at directed verdict.

JNOV and New Trial



Standard: Verdict is against the great weight of the evidence, jury misconduct, new evidence, or other reasons in 59(a).

Motion must be *served* within 10 days of entry of judgment.

Often combined with JNOV motion.
Court must rule on both. 50(c)(1).

Little Lamb, Inc. v. Mary



Decision Chart

	Evidence insufficient to support a verdict for plaintiff.	Evidence strongly favors defendant, but some evidence for plaintiff.	Evidence does not clearly weigh in favor of either party.	Evidence strongly favors plaintiff, but some evidence for defendant.	Evidence for plaintiff is uncontroverted (met burden as a matter of law).
Court's Conclusion					
Court's Action	Court should grant d.v. for defendant. (Should grant JNOV for defendant if verdict is for plaintiff.)	Court should deny d.v. and JNOV motions. * May consider granting new trial for defendant if verdict is for plaintiff.	Court should deny d.v. and JNOV motions.	Court should deny d.v. and JNOV motions. May consider granting new trial for plaintiff if verdict is for defendant.	Court should grant d.v. for plaintiff ** (Should grant JNOV for plaintiff if verdict is for defendant.)

* This diagram assumes a jury trial. In a non-jury trial, the court, as trier of fact, may grant a Rule 41(b) dismissal for defendant at close of plaintiff's evidence even where the plaintiff has presented evidence that would be sufficient to take to a jury.

** This is a rare occurrence. A court should take extra caution when granting directed verdict or JNOV for the party with the burden of proof.

JNOV and Punitive Damages

General JNOV standard:

- Whether there was "more than a scintilla" of evidence to support the jury's verdict.
- Viewing the evidence in the light most favorable to the non-movant.

JNOV and Punitive Damages

JNOV on a punitive damages verdict:

“Whether the non-movant produced ‘clear and convincing evidence’ by which the jury could find one of the aggravating factors necessary for punitive damages—fraud, malice, or willful/wanton conduct.”

Scarborough v. Dillard’s, Inc., 363 N.C. 715 (2009).

JNOV and Punitive Damages

In making its decision to deny or grant a JNOV on a punitive damages claim, the trial court must issue a written opinion as set forth in 1D-50, or the case **will be remanded** to the trial court upon appeal.

Springs v. City of Charlotte, 209 N.C. App. 271 (2011);
Hudgins v. Wagoner, 694 S.E.2d 436 (N.C. App. June 15, 2010).

JNOV and Punitive Damages

§ 1D-50. Judicial review of award.

When reviewing the evidence regarding a finding by the trier of fact concerning liability for punitive damages in accordance with G.S. 1D-15(a), or regarding the amount of punitive damages awarded, the trial court shall state in a written opinion its reasons for upholding or disturbing the finding or award. In doing so, the court shall address with specificity the evidence, or lack thereof, as it bears on the liability for or the amount of punitive damages, in light of the requirements of this Chapter. (1995, c. 514, s. 1.)

Rule 59(a) (new trial) grounds

(a) Grounds.—A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes or grounds:

- (1) Any irregularity by which any party was prevented from having a fair trial;
- (2) Misconduct of the jury or prevailing party;
- (3) Accident or surprise which ordinary prudence could not have guarded against;
- (4) Newly discovered evidence material for the party making the motion which he could not, with reasonable diligence, have discovered and produced at the trial;
- (5) Manifest disregard by the jury of the instructions of the court;
- (6) Excessive or inadequate damages appearing to have been given under the influence of passion or prejudice;
- (7) **Insufficiency of the evidence to justify the verdict or that the verdict is contrary to law;**
- (8) Error in law occurring at the trial and objected to by the party making the motion, or
- (9) Any other reason heretofore recognized as grounds for new trial.

Decision Chart

Court's Conclusion	Evidence insufficient to support a verdict for plaintiff.	Evidence strongly favors defendant, but some evidence for plaintiff.	Evidence does not clearly weigh in favor of either party.	Evidence strongly favors plaintiff, but some evidence for defendant.	Evidence for plaintiff is uncontroverted (met burden as a matter of law).
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- (7) Insufficiency of the evidence to justify the verdict or that the verdict is contrary to law;
- (8) **Error in law occurring at the trial and objected to by the party making the motion, or**
- (9) Any other reason heretofore recognized as grounds for new trial.

ALSO: Must have been materially prejudicial error.

Rule 3. Appeal in Civil Cases—How and When Taken

- (c) **Time for Taking Appeal.** In civil actions and special proceedings, a party must file and serve a notice of appeal:
 - (1) within thirty days after entry of judgment if the party has been served with a copy of the judgment within the three-day period prescribed by Rule 58 of the Rules of Civil Procedure; or
 - (2) within thirty days after service upon the party of a copy of the judgment if service was not made within that three-day period; provided that
 - (3) if a timely motion is made by any party for relief under Rules 50(b), 52(b) or 59 of the Rules of Civil Procedure, the thirty-day period for taking appeal is tolled as to all parties until entry of an order disposing of the motion and then runs as to each party from the date of entry of the order or its untimely service upon the party, as provided in subdivisions (1) and (2) of this subsection (c).

But was it a "proper" Rule 59 motion?



Not "proper" Rule 59 motion when:

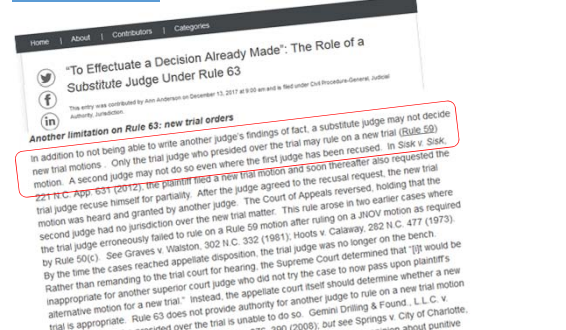
- Seeks relief from order *not resulting from trial*. *Bodie Island Beach Club*, 215 N.C. App. 283 (2011) (summary judgment), *Mehaffey v. Boyd*, 812 S.E.2d 198 (Ct. App. Mar. 2018) (citing *Bodie*).
- Seeks relief from *interlocutory* [but appealable] orders
 - *Davis v. Rizzo*, 819 S.E.2d 574 (Ct. App. Aug. 2018) (motions to continue/stay)
 - *Tetra Tech Tesoro, Inc. v. JAAAT*, Dec. 2016. (motion to modify preliminary injunction)
- Motion isn't specific enough to give proper notice of its basis.
 - *Quevedo-Woolf v. Overholser* (COA17-675; Sept. 2018).
 - *North Carolina Alliance for Transp. Reform, Inc.*, 183 N.C. 466 (2007) (motion didn't invoke Rule 59 grounds).
 - *Smith v. Johnson*, 125 N.C. App. 603 (1997) (no allegations to back up motion).
- Basis isn't truly based on one of the grounds in Rule 59(a).
 - *Town of Apex v. Rubin* (COA17-955; Oct. 2018) ("new evidence" wasn't new)
- Not merely to "rehash arguments."
 - *Rizzo* (2018)

Rule 63. Disability of a judge.

If by reason of death, sickness or other disability, resignation, retirement, expiration of term, removal from office, or other reason, a judge before whom an action has been tried or a hearing has been held is unable to perform the duties to be performed by the court under these rules after a verdict is returned or a trial or hearing is otherwise concluded, then those duties, including entry of judgment, may be performed:

- (1) In actions in the superior court by the judge senior in point of continuous service on the superior court regularly holding the courts of the district. If this judge is under a disability, then the resident judge of the district senior in point of service on the superior court may perform those duties. If a resident judge, while holding court in the judge's own district suffers disability and there is no other resident judge of the district, such duties may be performed by a judge of the superior court designated by the Chief Justice of the Supreme Court.
- (2) In actions in the district court, by the chief judge of the district, or if the chief judge is disabled, by any judge of the district court designated by the Director of the Administrative Office of the Courts.

If the substituted judge is satisfied that he or she cannot perform those duties because the judge did not preside at the trial or hearing or for any other reason, the judge may, in the judge's discretion, grant a new trial or hearing. (1967, c. 954, s. 1; 2001-379, s. 7.)



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"To Effectuate a Decision Already Made": The Role of a Substitute Judge Under Rule 63

This entry was published by Ann Anderson on December 11, 2017 at 9:02 am and is filed under Civil Procedure/Governance, Judicial Authority/Judiciary.

Another limitation on Rule 63: new trial orders

In addition to not being able to write another judge's findings of fact, a substitute judge may not decide any trial motions. Only the trial judge who presided over the trial may rule on a new trial (Rule 59). In *Sisk v. Sisk*, the court vacated the judgment and remanded for a new trial even where the first judge has been recused. In *Sisk v. Sisk*, the court vacated the judgment and remanded for a new trial even where the first judge has been recused. In *Sisk v. Sisk*, the court vacated the judgment and remanded for a new trial even where the first judge has been recused.

REITERATED IN SEPTEMBER IN:

Quevedo-Woolf v. Overholser (COA17-675; 2018):

- One judge heard and ruled in custody proceeding. That judge later recused himself.
- Substituted judge granted new custody hearing after hearing Rule 59 motion.
- Court of Appeals vacated for lack of jurisdiction of substituted judge.



Bench Trials – Rule 41(b)

- In a non-jury trial, the judge may render a decision against plaintiff after plaintiff rests, even if the evidence would be sufficient to go to a jury.
 - Court must make written findings of fact and conclusions of law. Rule 52(a)(1).
- Upon motion, Court may grant new trial under Rule 59 or amend judgment under Rule 59(e)/52 (same 10-day deadline). (See *Chapter 3*.)

Relief from Judgment
Rule 60(b)

Rule 60(b)

- Relief from a “final judgment, order, or proceeding” for reasons relating to circumstances:
 - (1) Mistake, inadvertence, surprise, or excusable neglect;★
 - (2) Newly discovered evidence which by due diligence could *not have been discovered in time for new trial motion*;
 - (3) Fraud, misrepresentation, or other misconduct of an adverse party;

One Year max

Rule 60(b)

- (4) Judgment is void;
- (5) Judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or vacated, or it is no longer equitable that the judgment have prospective application; or
- (6) Any other reason justifying relief from the operation of the judgment.

60(b)(6)

- “Grand reservoir of equitable power to do justice in a particular case.”
- ~~Catch-all~~

60(b)(6)

Requires:

- Extraordinary circumstances
- That “justice demands it”
- Movant must have “meritorious defense” (or meritorious case)

Gibby v. Lindsey, 149 N.C. App. 470 (2002); *Oxford Plastics v. Goodson*, 74 N.C. App. 256 (1985).

60(b)(6)

Cannot be used to circumvent requirements for (b)(1) to (b)(5).

- *E.g.*, if argument is newly-discovered evidence ((b)(2)), and more than 1 year has passed, cannot argue under (b)(6).

Bruton v. Sea Captain Prop., Inc., 96 N.C. App. 485, 386 S.E.2d 58 (1989).

Little Lamb, Inc. v. Mary

60(b)

KEY LIMITATION:

- **NOT to be used to correct errors of law.** *Catawba Valley Bank v. Porter*, 188 N.C. App. 326, 655 S.E.2d 473 (2008); *Hagwood v. Odom*, 88 N.C. App. 513 (1988).
- **NOT a substitute for appellate review or motions for new trial.** *Id.*; *Jenkins v. Richmond Cty*, 118 N.C. App. 166 (1995).

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May a Different Judge Hear My Rule 60(b) Motion?

This entry was contributed by Ann Anderson on August 3, 2016 at 5:00 am and is filed under Civil Practice, Civil Procedure, General Judicial Authority.

Lawyers typically don't litigate their judges' adjudications for very long in North Carolina without confronting Rule of Civil Procedure 60(b). This rule allows a trial court to "reopen a party, from a final judgment, order, or proceeding for a number of reasons based in equity. The reasons are divided into six categories:

- Mistake, inadvertence, surprise, or excusable neglect;
- Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 39(b);
- Fraud... misrepresentation, or other misconduct of an adverse party;
- The judgment is void;
- The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- Any other reason justifying relief from the operation of the judgment.

Unlike Rule 50 (j)(2)(C) and 50 (new trial) motions, which must be made within 10 days after judgment, Rule 60(b) motions may be filed up to one year from the order for. For the last three categories, potentially even later, as long as the timing is reasonable. There will be occasions when the moving party can be heard by the same judge who issued the order. But often the passage of time can make this difficult. The judge may be providing in a different district or may be ill, on leave, or no longer on the bench. It is not surprising, then, that fairly often my colleagues and I are asked: **Can a judge other than the original judge hear and rule on a Rule 60(b) motion?**

Yes. Unlike Rule 50 and 50 motions, Rule 60(b) motions may be heard and determined by a judge other than the judge who entered the order in question. *Van Engen v. Que SCL, Inc.*, 151 N.C. App.

Rule 60 – Effect of Appeal

- Once appeal is filed, trial court divested of jurisdiction to decide Rule 60(b) motion.
 - *Sink v. Easter*, 288 N.C. 183 (1975).
- If an appeal withdrawn, jurisdiction regained.
 - *York v. Taylor*, 79 N.C. App. 653 (1986).
- If appeal pending, trial court may conditionally determine how it would rule. Appeals court must be notified so that it may remand/delay the appeal. – *Hall v. Cohen*, 177 N.C. App. 456 (2006).

(See  p. 225.)