

Post Trial Motions

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Post Trial Motions

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Post Trial Motions

The trial is over, and sometimes things do not go quite as expected. As a result, a party not satisfied with the outcome of the trial may file a post trial motion. This chapter reviews the fundamentals of several common post trial motions; namely, 1) a motion for judgment as a matter of law, 2) a motion for a new trial, 3) a motion to alter or amend the judgment, and 4) a motion for relief from the judgment. This chapter is based on the Federal Rules of Civil Procedure in recognition of the fact that the federal rules are used nationwide, and therefore provide a convenient point of reference for all trial attorneys.¹

Rule 50(b)—Judgment as a Matter of Law Grounds

After a jury trial, a party dissatisfied with the jury's verdict (which is subsequently memorialized in the trial court's judgment) may request that the trial court enter a judgment in its favor, notwithstanding the jury's verdict, on the ground that the evidence at trial did not support the verdict. This is a motion for judgment as a matter of law after trial, made under Federal Rule of Civil Procedure 50(b). It is also known as a renewed motion for judgment as a matter of law, and was formerly known as both a motion for judgment

notwithstanding the verdict and for judgment n.o.v.²

The issue for the trial court on such a motion is not whether there is no evidence supporting the non-moving party's case, but whether there is sufficient evidence for a reasonable jury to find in favor of the non-moving party.³ The trial court views the evidence in the light most favorable to the non-moving party, and gives the non-moving party the benefit of all reasonable inferences that can be drawn from the evidence. In making its determination, the trial court does not weigh the evidence or consider the credibility of the witnesses. The trial court will grant the motion if the evidence is so one-sided that there can be only one conclusion reached by a reasonable jury.⁴ The standard used by the trial court has been described as being similar to the standard used in motions for summary judgment.⁵

When presented with such a motion, the trial court has three options. It may deny the motion and let the judgment stand, grant the motion and enter the judgment requested by the moving party, or grant the motion but order a new trial instead of entering the requested judgment (regardless of whether the moving party requests a new trial).⁶

A party making such a motion may also, in the alternative, make a motion for a new trial under Fed-

¹ This chapter is intended as a concise and convenient summary of post trial motions. The trial attorney filing or opposing such motions should consult one or both of the leading multi-volume texts on federal practice and procedure: *Federal Practice and Procedure* and *Moore's Federal Practice*. Both include a comprehensive explanation of post-trial motions and extensive references to case law and secondary authorities. One benefit of these texts is that they cite supporting case law from federal courts throughout the nation. The portions of these texts referenced in this chapter are 9A Charles Alan Wright and Arthur R. Miller, *Federal Practice and Procedure*, §§2521–2550 (Judgment as a Matter of Law); 11 Charles Alan Wright, Arthur R. Miller and Mary Kay Kane, *Federal Practice and Procedure*, §§2801–2821 (New Trials; Amendment of Judgments), and §§2851–2873 (Relief from Judgment or Order); 9 Martin H. Redish, *Moore's Federal Practice*, Chapter 50 (Judgment as a Matter of Law); 12 Martin H. Redish, *Moore's Federal Practice*, Chapter 59 (New Trials and Amendment of Judgments); and 12 Joseph T. McLaughlin and Thomas D. Rowe, Jr., *Moore's Federal Practice*, Chapter 60 (Relief from Judgment or Order). References to these texts will be shown as “*Fed. Prac. & Pro.*” and “*Moore's.*”

² 9A *Fed. Prac. & Pro.* §2521; 9 *Moore's* §50.03.

³ See Fed. R. Civ. P. 50(a)(1). Note that the standards under Rule 50(a) and Rule 50(b) are the same. See *Fed. Prac. & Pro.* §2524 & §2537.

⁴ 9A *Fed. Prac. & Pro.* §2524. See also *id.* §§2527–2528.

⁵ 9A *Fed. Prac. & Pro.* §2532. See Rule 56(c); *Matsushita Elec. Co. v. Zenith Radio*, 475 U.S. 574 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

⁶ Fed. R. Civ. P. 50(b)(1). See 9A *Fed. Prac. & Pro.* §2538; 9 *Moore's* §50.50.

eral Rule of Civil Procedure 59(a).⁷ If the trial court grants a motion for judgment as a matter of law, and a request for a new trial is made, the court must make a ruling on the motion for a new trial and explain its reasons for the ruling. However, in such a situation, the trial court's ruling on the new trial is conditional; that is, it becomes important only if the appellate court vacates or reverses the entry of judgment as a matter of law. If the court denies the motion for judgment as a matter of law, then it does not have to rule on the motion for a new trial.⁸

The standard on a motion for judgment as a matter of law is more stringent than that for a new trial. The reason is that a motion for judgment under Rule 50(b) involves the sufficiency of the evidence to support the verdict, while a motion for a new trial under Rule 59(a) on the ground that the verdict is against the weight of the evidence involves the exercise of the trial court's sound discretion. Thus, a trial court may set aside the verdict and order a new trial, but may not feel justified in entering judgment as a matter of law.⁹

Procedure

Time for Making Motion

A motion for judgment as a matter of law made after the trial under Federal Rule of Civil Procedure 50(b) must be filed within ten days after the *entry* of the judgment. This time period cannot be enlarged by the court or the parties.¹⁰

Only business days are counted; weekends and legal holidays are not.¹¹ The ten day period begins to run on the date that the clerk of the court enters the judgment on the civil docket, not on counsel's actual receipt of the judgment.¹²

Prerequisite for Making Motion

A party cannot make a motion after trial under Rule 50(b) unless it had previously made a motion for judgment as a matter of law under Rule 50(a) at any time prior to the verdict, which was formerly known as a motion for a directed verdict.¹³ The basis of such a motion made after the trial is therefore limited to the grounds raised in a motion under Rule 50(a) made at the close of the evidence prior to the verdict. In other words, the grounds set forth in a motion under Rule 50(a) are preserved for the renewed motion under Rule 50(b).¹⁴ If a party makes a motion under Rule 50(b) but did not make a motion prior to the verdict under Rule 50(a), the motion may be heard by the court only if the non-moving party does not object to the failure to make the requisite prior motion. In such a situation, the prerequisite motion is deemed waived.¹⁵

Effect on Time to Appeal

A motion that is filed within the ten day period under Rule 50(b) will toll the time to file an appeal, and the full time to appeal will begin to run upon the entry of an order disposing of the motion.¹⁶

Subsequent Motion Practice

Note that if the trial court grants a motion for judgment as a matter of law under Rule 50(b), the non-moving party (the party against whom a judgment has been entered as a result of the motion) may file a motion for a new trial under Rule 59(a) within ten days of the entry of the judgment as a matter of law.¹⁷ Motions for a new trial are reviewed in the next section.

⁷ Fed. R. Civ. P. 50(b).

⁸ Fed. R. Civ. P. 50(c)(1). See 9A Fed. Prac. & Pro. §2539; 9 Moore's §50.50[1] & [3].

⁹ 9A Fed. Prac. & Pro. §2531; 9 Moore's §50.06[6][b] & §50.65.

¹⁰ Fed. R. Civ. P. 50(b); Rule 6(b). See 9A Fed. Prac. & Pro. §2537; 9 Moore's §50.42.

¹¹ Fed. R. Civ. P. 6(a).

¹² Fed. R. Civ. P. 58(b)(1).

¹³ 9 Moore's §50.40. See also 12B Federal Practice & Procedure: Civil Rules—2006 Quick Reference Guide, at 786. This is why Rule 50(b) designates such a motion as a *renewed* motion for judgment as a matter of law.

¹⁴ 9A Fed. Prac. & Pro. §2537; 9 Moore's §50.40.

¹⁵ 9 Moore's §50.40[4].

¹⁶ Fed. R. App. P. 4(a)(4)(A). See Moore's §50.42.

¹⁷ Fed. R. Civ. P. 50(c)(2). See 9A Fed. Prac. & Pro. §2539; 9 Moore's §50.51.

Rule 59(a)—Motion for New Trial

Grounds

In General

A party may also make a motion for a new trial under Federal Rule of Civil Procedure 59(a), either alone or, as noted above, as an alternative to a renewed motion for judgment as a matter of law under Rule 50(b). There is no specific standard in Rule 59(a) for the trial court to use in deciding whether to grant or deny a motion for a new trial. Instead, the standard to be used will depend on the specific grounds in the motion requesting a new trial.¹⁸

Rule 59(a) provides that a trial court may grant a new trial for any of the reasons that new trials were granted under the common law. Generally, these grounds are:

- newly discovered evidence;
- verdict against the clear weight of the evidence;
- excessive or inadequate damages;
- prejudicial legal error, such as substantial error in the admission or exclusion of evidence or in giving instructions to jury; and
- prevent injustice.¹⁹

The trial court has broad discretion to grant or deny a new trial.²⁰ In considering such a motion, the trial court will generally deny the motion and uphold the jury verdict when there is a reasonable basis for the verdict. As a result, it can be said that there is a presumption favoring a jury's verdict and the trial court will review the record for evidence that could have reasonably led the jury to reach its verdict.²¹

Partial New Trial. A trial court is not required to grant a new trial on all issues and as to all parties. Rather, it has the discretion to grant a partial new trial on only some issues and only as to certain parties. The judgment will stand against the parties not affected by the grant of a partial new trial.²²

Newly Discovered Evidence

A party may seek a new trial on the ground of newly discovered evidence. Although the courts differ on the language used, in general a party must show the following:

- the “new” evidence was discovered after the trial;
- the moving party did not discover, or was excusably ignorant of, the evidence at the time of trial;
- the use of due diligence could not have discovered the evidence;
- the evidence is material and admissible;
- if the evidence was considered at trial, it would have likely changed the outcome of the case; and
- the evidence is not merely cumulative or impeaching.²³

Verdict against Weight of Evidence

A party may also seek a new trial on the ground that the verdict is against the weight of the evidence. Here, the trial court must be convinced that the verdict is against the clear or great weight of the evidence. The trial court must consider and weigh all of the evidence, including conflicting testimony and the credibility of the witnesses. The trial court does not, however, substitute its own judgment and assessment of the credibility of the witnesses for that of the jury.²⁴

The trial court has broad discretion in deciding whether to grant a new trial on such a ground. The court may grant a new trial, however, only if the verdict is against the weight of the evidence so as to constitute a miscarriage of justice. That is, when the verdict is against the clear or great weight of the evidence.²⁵

Unlike a renewed motion for judgment as a matter of law under Rule 50(b), it is not necessary for a moving party to show that the evidence at trial is legally insufficient to support the verdict. Indeed, it has been noted that a court may grant a new trial even if the

¹⁸ See Fed. R. Civ. P. 59(a). See *Moore's* §59.13[1].

¹⁹ 12 *Moore's* §59.13[1]; 11 *Fed. Prac. & Pro.* §2805.

²⁰ 11 *Fed. Prac. & Pro.* §2803.

²¹ 12 *Moore's* §59.13[2][a].

²² Fed. R. Civ. P. 59(a); 12 *Moore's* §59.14.

²³ 12 *Moore's* §59.13[2][d]; 11 *Fed. Prac. & Pro.* §2808.

²⁴ 12 *Moore's* §59.13[2][f][iii].

²⁵ 12 *Moore's* §59.13[2][f][iii]; 11 *Fed. Prac. & Pro.* §2806.

verdict is supported by substantial evidence. However, in such a circumstance, the trial court makes the determination that the verdict is still against the clear or great weight of the evidence, even though the evidence is substantial.²⁶

Excessive Verdict

A party (usually the defendant) may request a new trial on the ground that the damages awarded in the jury verdict are excessive. When reviewing such a motion, the trial court weighs the evidence and uses its independent judgment to determine whether the verdict is against the clear weight of the evidence or whether the verdict results in a miscarriage of justice. The trial court may grant a full new trial or a partial new trial limited to the issue of damages.²⁷

In the case of an excessive award of *punitive* damages, the trial court must consider the nature of the defendant's misconduct, the difference between the harm suffered by the plaintiff (*e.g.*, compensatory damages) and the award, and the difference between the award and the civil penalties authorized or imposed by law in similar cases.²⁸

Remittitur. If a trial court determines that the award of damages is excessive, it may compel the party who prevailed at trial to choose between a new trial and a reduction of the award, which is known as a remittitur. Such a prevailing party must agree to accept a remittitur; otherwise, the court must grant a full or partial new trial.²⁹

Inadequate Verdict

A party (usually the plaintiff) may request a new trial on that ground that the damages awarded in the verdict are inadequate. If the court determines that the evidence does not support the verdict, it will grant a new trial.³⁰

Additur. The court cannot offer an additur, meaning that it cannot offer the party prevailing at trial (in this case, usually the defendant) an additur (*i.e.*, an increase in the verdict) in exchange for denying a motion for a new trial. Additur has been held to be an unconstitutional infringement on a party's right to a trial by jury.³¹

Prejudicial Legal Errors

A party can seek a new trial based on a *prejudicial* error; that is, an error affecting a party's substantive rights. If an error does not affect a party's substantive rights, then it will be disregarded as a harmless error under Rule 61.

Errors by the Court. As noted, a party may move for a new trial when there has been a prejudicial error of law. For example, when the trial court incorrectly charges the jury, and thereby affects the jury's deliberations by misleading or confusing the jury.³² In addition, the denial of a jury trial and the improper submission of an issue to, or the withdrawal of an issue from, the jury can serve as the basis for a new trial. Likewise, the improper admission of prejudicial evidence or the failure to admit highly probative evidence may be grounds for a new trial.³³

Misconduct of Counsel. A party may be entitled to a new trial due to the misconduct of counsel that is prejudicial. In order to obtain a new trial on this ground, the party must have objected to the misconduct during the trial and the court must have failed to cure the misconduct through instructions to the jury. When considering a motion for a new trial based on counsel's misconduct, the trial court must consider whether it is reasonably probable that the verdict was influenced by the misconduct.³⁴

By way of example, statements by counsel about other counsel, the parties, or the claims or defenses may be improper if there is no evidence to support the state-

²⁶ 12 Moore's §59.13[2][f][iii][B]; 11 Fed. Prac. & Pro. §2806.

²⁷ 12 Moore's §59.13[2][g][iii]; 11 Fed. Prac. & Pro. §2807.

²⁸ 12 Moore's §59.13[2][g][iii][B].

²⁹ 12 Moore's §59.13[2][g][iii]; 11 Fed. Prac. & Pro. §2815.

³⁰ 12 Moore's §59.13[2][g][ii]; 11 Fed. Prac. & Pro. §2807.

³¹ 12 Moore's §59.13[2][g][ii]; 11 Fed. Prac. & Pro. §2816. *But see* 12 Moore's §59.13[2][g][ii][C] (noting some limited continued use of additur).

³² 12 Moore's §59.13[2][b][i][B].

³³ 12 Moore's §59.13[2][b][i][c].

³⁴ 12 Moore's §59.13[2][c].

ments. As noted, the misconduct will be deemed prejudicial if it affects a party's substantive rights or prevents a claim from being fairly presented to and considered by the jury. For example, references to a defendant's wealth or insurance coverage are generally considered prejudicial, as they affect a party's substantial rights.³⁵

Procedure

Time for Making Motion

A party must file a motion for a new trial within ten days after the *entry* of judgment.³⁶ However, such a motion may even be filed prior to the entry of judgment. Like a motion under Rule 50(b), this ten day time period is mandatory and may not be extended by the court or the parties.³⁷ A party unable to move for a new trial within the ten days provided for under Rule 59(a) may seek a new trial under Rule 60(b).³⁸

Only business days are counted; weekends and legal holidays are not.³⁹ The ten day period begins to run on the date that the clerk of the court enters the judgment on the docket, not on counsel's receipt of the judgment.⁴⁰

Effect on Time to Appeal

A motion for a new trial that is filed in a timely manner under Rule 59 tolls the time to file an appeal. The full time to appeal begins to run from the date of the entry of the order disposing of the motion.⁴¹

Rule 59(e)—Motion to Alter or Amend a Judgment

Grounds

A party may request the trial court to alter or amend

its judgment under Federal Rule of Civil Procedure 59(e). A motion for "reconsideration" falls within the rule. This rule allows the trial court to correct its own mistakes.⁴² Such a motion involves a trial court's reconsideration of a matter in its decision on the merits. Note that a party's request for prejudgment interest is a motion under Rule 59(e) but that a request for an award of attorney's fees is not.⁴³

The court has broad discretion in determining whether to grant or deny such a motion. However, reconsideration of a judgment is an extraordinary remedy that is used sparingly.⁴⁴

Although there are differences from court to court, there are several grounds recognized by the courts that warrant the alteration or amendment of a judgment:

- to reflect an interviewing change in the law since the entry of the judgment;
- due to the discovery of new evidence after the entry of the judgment;⁴⁵
- to correct a clear error of law or of fact; and
- to prevent manifest injustice; that is, the existing judgment would cause or result in a manifest injustice.⁴⁶

A Rule 59(e) motion may not be used to re-litigate a matter already decided by the court or to raise a new argument or present evidence that was available and could have been made or presented during the trial. Such a motion should not be made if a party merely disagrees with the trial court's decision. Rather, the party should file an appeal.⁴⁷

Procedure

Time for Making Motion

A party must file a motion to alter or amend a judg-

³⁵ See *id.*

³⁶ Fed. R. Civ. P. 59(b).

³⁷ Fed. R. Civ. P. 6(b). See 12 *Moore's* §59.11[1]; 11 *Fed. Prac. & Pro.* §2811.

³⁸ 12 *Moore's* §59.11[4][b]. See *infra* for a discussion of motions under Rule 60(b).

³⁹ Fed. R. Civ. P. 6(a).

⁴⁰ Fed. R. Civ. P. 58(b)(1). See 12 *Moore's* §59.11[3].

⁴¹ Fed. R. App. P. 4(a)(4)(A). See 12 *Moore's* §59.12; 11 *Fed. Prac. & Pro.* §2812.

⁴² 12 *Moore's* §59.30[1]. See generally 11 *Fed. Prac. & Pro.* §2810.1.

⁴³ 12 *Moore's* §59.30[2]. See also 12 *Moore's* §59.30[6].

⁴⁴ 12 *Moore's* §59.30[4].

⁴⁵ See the discussion of "newly discovered evidence" under Fed. R. Civ. P. 59(a), *supra*.

⁴⁶ 12 *Moore's* §59.30[5][a].

⁴⁷ 12 *Moore's* §59.30[6].

ment within ten days after the entry of the judgment.⁴⁸ The ten-day period begins to run on the date that the clerk of the court enters the judgment on the civil docket, not on counsel's receipt of the judgment.⁴⁹

Effect on Time to Appeal

A Rule 59(e) motion that is filed within ten days after the entry of judgment will toll the time to file an appeal. The full time to appeal begins to run from the date of the entry of the order disposing of the motion.⁵⁰

Rule 60(b)—Relief from a Judgment or Order

Grounds

The motions reviewed so far are filed within the ten-day period after the entry of judgment. There is, however, an opportunity to obtain some post trial relief even after this ten-day period by filing a motion under Federal Rule of Civil Procedure 60(b). The rule specifies a number of grounds for relief a judgment or order, and includes a catch-all category.

Mistake, etc.

Rule 60(b)(i) provides that the court may relieve a party from a judgment due to “mistake, inadvertence, surprise, or excusable neglect.” This ground typically involves an error made by a party or its attorney. Therefore, an intentional strategic decision, which may turn out to be erroneous, does not fall under Rule 60(b)(i).⁵¹

A party is not entitled to relief, however, simply due to inadvertence, incompetence, or ignorance of the law, unless it demonstrates the exercise of due diligence, meaning “excusable neglect.” Whether conduct

constitutes “excusable neglect” is determined on a case-by-case basis.⁵² For example, routine carelessness, confusion about the court rules, or a misunderstanding about the consequences of a certain action does not constitute excusable neglect.⁵³

The standard for relief under this rule is a demanding one. A party must demonstrate that the error did not result from its own culpable conduct. In addition, equitable factors are considered by the court, including any prejudice to the other party, the length of delay, the impact on the action, and the moving party's good faith.⁵⁴

Newly Discovered Evidence

A party may obtain relief from a judgment under Rule 60(b)(2) due to newly discovered evidence. The standard for relief under Rule 60(b)(2) is the same as the standard to obtain a new trial under Rule 59(a).⁵⁵

Fraud, etc.

A party may obtain relief from a judgment for the “fraud... misrepresentation, or other misconduct of an adverse party” under Rule 60(b)(3). For example, a party who discovers that its adversary tampered with trial witnesses may be entitled to relief from a judgment.⁵⁶ Under such a motion, a party must demonstrate that it had a meritorious claim and that the other party's conduct prevented it from making a full and fair presentation of its case at trial.⁵⁷

Void Judgment

Under Rule 60(b)(4), a party may be relieved of the judgment where the judgment is void. For example, where the court entering the judgment did not have

⁴⁸ Fed. R. Civ. P. 50(e). See 12 Moore's §59.30[7] & §59.31; 11 Fed. Prac. & Pro. §2817.

⁴⁹ Fed. R. Civ. P. 58(a)(1). See 12 Moore's §59.31[5].

⁵⁰ 12 Moore's §59.32[2]; 11 Fed. Prac. & Pro. §2817.

⁵¹ 12 Moore's §60.41; 11 Fed. Prac. & Pro. §2858.

⁵² 12 Moore's §60.41[1][a], citing *Pioneer Inv. Serv. Co. v. Brunswick Assoc. Ltd. Partnership*, 507 U.S. 380, 387–389, 113 S.Ct. 1489, 123 L.Ed. 74 (1993) (discussing the meaning of the term “excusable neglect”).

⁵³ 12B *Federal Practice & Procedure: Civil Rules—2006 Quick Reference Guide*, at 940.

⁵⁴ See *id.*

⁵⁵ 12 Moore's §60.42; 11 Fed. Prac. & Pro. §2859. See also 12B *Federal Practice & Procedure: Civil Rules—2006 Quick Reference Guide*, at 941.

⁵⁶ 12 Moore's §60.43[1][a].

⁵⁷ 12 Moore's §60.43[1][c]; 11 Fed. Prac. & Pro. §2860. See also 12B *Federal Practice & Procedure: Civil Rules—2006 Quick Reference Guide*, at 941–42.

subject matter or personal jurisdiction, or acted beyond the power granted to it by law. Of course, if the issue of jurisdiction was previously raised and decided by the trial court, then, generally, it may not be re-examined under Rule 60(b)(4).⁵⁸ The court has no discretion under the rule. If the judgment is void, then relief must be granted.

Rule 60(b)(5)

Under Rule 60(b)(5), the trial court may relieve a party from a judgment where “[1] The judgment has been satisfied, released, or discharged, or [2] a prior judgment upon which it is based has been reversed or otherwise vacated, or [3] it is not longer equitable that the judgment should have prospective application.”

The first two phrases of Rule 60(b)(5) are self-explanatory.⁵⁹ The last phrase of Rule 60(b)(5) typically involves injunctions, declaring judgments, or consent decrees. Normally, money judgments do not have prospective applications. The last phrase concerns circumstances where the continued effect of the judgment would be inequitable; for example, where there is a significant change in the law or facts. In other words, the moving party must demonstrate that it is no longer equitable for the judgment to have prospective application because of a change in law of facts.⁶⁰

The Catch-All (Other Reasons)

Rule 60(b)(6) is a catch-all provision allowing the trial court to relieve a party from a judgment for “any other reason justifying relief from the operation of the

judgment.”⁶¹ A party must demonstrate extraordinary circumstances to obtain relief under this rule, which usually requires the moving party to be free from fault.⁶²

The catch-all and the five other reasons under Rule 60(b) are mutually exclusive. That is, if the reason for relief falls under one of the five other categories, then it cannot fall under the catch-all, even if relief cannot be granted under one of the five categories.⁶³

Procedure

Time for Making Motion

Generally, a motion under Rule 60(b) must be made within a “reasonable time.” In addition, a motion under Rule 60(b)(1), (2) or (3) must be made within one year of the entry of judgment. A motion under Rule 60(b)(4) may be made at any time.⁶⁴

Effect on Time to Appeal

A motion under Rule 60(b) that is filed within ten days of the entry of a judgment tolls the time for filing an appeal on that judgment.⁶⁵ Consequently, a motion filed thereafter does not toll the time to appeal.⁶⁶

Conclusion

A trial attorney should consider filing a post trial motion before filing an appeal, which can be an expensive and prolonged process. By doing so, the time to file an appeal will be tolled, and he or she may be able to persuade the trial court to grant the relief requested in such a motion, thus avoiding the need for an appeal.⁶⁷

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⁵⁸ 12 *Moore's* §60.44; 11 *Fed. Prac. & Pro.* §2862.

⁵⁹ See 12 *Moore's* §§60.45–60.47; 11 *Fed. Prac. & Pro.* §2863.

⁶⁰ 12 *Moore's* §§60.47.

⁶¹ See 12 *Moore's* §60.48; 11 *Fed. Prac. & Pro.* §2864.

⁶² 12 *Moore's* §§60.48[1] & [3].

⁶³ 12 *Moore's* §§60.48[1] & [2]; 11 *Fed. Prac. & Pro.* §2864.

⁶⁴ 12 *Moore's* §§60.65; 11 *Fed. Prac. & Pro.* §2866.

⁶⁵ Fed. R. App. P. 4(a)(4)(A)(vi).

⁶⁶ See 12 *Moore's* §60.66.

⁶⁷ An accurate recitation of the evidence and a persuasive legal argument in a party's brief are the obvious keys to a successful post trial motion. However, a clear and proper notice of motion, perhaps an affidavit, and other motion papers are also necessary. Forms for the types of post trial motions reviewed in this chapter can be found in such multi-volume books as *Bender's Federal Practice Forms* (Matthew Bender) and *Federal Procedural Forms—Lawyers Edition* (Thomson West).

