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

Lawyers typically don't litigate (nor judges adjudicate) for very long in North Carolina without confronting Rule of Civil Procedure 60(b). This rule allows a trial court to "relieve 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 59(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 (JNOV) and 59 (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 (or, 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 presiding in a different district or may be ill, on leave, or no longer on the bench. It's not surprising, then, that fairly often my colleagues and I are asked: **May a judge *other* than the original judge hear and rule on a Rule 60(b) motion**?

Yes. Unlike Rule 50 and 59 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 Sci., Inc., 151 N.C. App. 683 (2002). On several occasions the Court of Appeals has remanded cases for hearing where a second judge apparently declined to rule on a Rule 60(b) motion believing he or she had no authority to do so. See Novak v. Daigle, 226 N.C. App. 253 (2013); Boseman v. Jarrell, 199 N.C. App. 128 (2009), rev'd in part on other grounds, 364 N.C. 537 (2010); Trent v. River Place, LLC, 179 N.C. App. 72 (2006); Hoglen v. James, 38 N.C. App. 728, 731 ("Because [the judge] erroneously believed he lacked the power to grant the relief requested, plaintiff has never had the proper hearing on his Rule 60(b) motion to which he is entitled.").

But wait, what about that "one judge overruling another" rule?

It's true that one trial judge cannot overrule an order entered by another judge either on a legal question or, in the absence of substantial changed circumstances, on a discretionary matter. In other words, a party cannot effectively seek "appeal" of a ruling at the trial level. As our Supreme Court has put it: "[I]t is well established in our jurisprudence that no appeal lies from one Superior Court judge to another; that one Superior Court judge may not correct another's errors of law; and

that ordinarily one judge may not modify, overrule, or change the judgment of another Superior Court judge previously made in the same action." Calloway v. Ford Motor Co., 281 N.C. 496, 501 (1972). (The rule applies to district court as well. For more about the ins and outs of the rule, see a more detailed discussion here).

But, when a Rule 60(b) motion is filed for a proper purpose, it does not seek this type of *review* of another trial judge's decision. Rule 60(b) is not intended to address a trial court's errors of law, and it is not to be used as a substitute for actual appeal, even under the broad language of Rule 60(b)(6). McIntosh v. McIntosh, 184 N.C. App. 697 (2007); Baxley v. Jackson, 179 N.C. App. 635 (2006); Garrison ex rel. Chavis v. Barnes, 117 N.C. App. 206 (1994); Taylor v. Triangle Porsche-Audi, Inc., 27 N.C. App. 711 (1975). As the Court of Appeals has stated, "A 60(b) order does not overrule a prior order but, consistent with statutory authority, relieves parties from the effect of an order."? Charns v. Brown, 129 N.C. App. 635, 639 (1988).

So the general rule that one trial judge may not overrule another does not apply to proper Rule 60(b) motions. *Hoglen*, 38 N.C. App. at 731; Charleston Cap. Corp. v. Love Valley Enters., Inc., 10 N.C. App. 519 (1971). Of course, simply *calling* something a Rule 60(b) motion when it actually seeks appellate-type review rather than equitable relief will not shield it from the "one judge overruling another" restriction. *See, e.g.*, Duplin Cty. DSS *ex rel.* Pulley v. Frazier, 230 N.C. App. 480, 482 (2013) (vacating Rule 60(b) order by second judge modifying child support payment without proper Rule 60 basis); Whitfield v. Wakefield, 51 N.C. App. 124, 127–28 (1981) (trial judge erroneously entered Rule 60(b) order that effectively substituted his judgment for that of original judge).

Looking for more on Rule 60(b)? Have a look at our new book ***Relief from Judgment in North Carolina Civil Cases.*** It covers the range of motions for relief from judgment at the trial level—JNOV under Rule 50, amendment of judgment, new trial, and Rule 60(b). Pick it up here at the SOG's online bookstore. It easily fits in a briefcase!