

PREVIEW OF FIRST THREE PAGES
OF CHAPTER TWELVE

POST-JUDGMENT PROCEEDINGS [12.00.0]:

A. MOTIONS FOR RECONSIDERATION [12.10.0]:

Reconsideration is appropriate if (1) the district court is presented with newly discovered evidence, (2) the district court committed clear error or the initial decision was manifestly unjust, or (3) there is an intervening change in controlling law. *Brown v. Latin American Music Co., Inc.*, 498 F.3d 18, 25 (1st Cir. 2007); *Henderson v. Walled Lake Consol. Schs.*, 469 F.3d 479, 496 (6th Cir. 2006); *Brumark Corp. v. Samson Res. Corp.*, 57 F.3d 941, 948 (10th Cir. 1995); *School Dist. No. 1J, Multnomah Cty. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). The procedural requirements for filing a motion for reconsideration are typically governed by local rule.

Motions for reconsideration may apply to both court decisions which are not yet final and final orders and judgments. Where the ruling has resulted in a final judgment, the motion for reconsideration may be treated as a motion to alter or amend judgment under Fed. R. Civ. P. 59(e) or as a motion for relief from judgment or order under Fed. R. Civ. P. 60(b). If the motion does not state which of these two rules the motion is brought, the motion may be treated as a Rule 59(e) motion if filed within ten days of entry of judgment, and as a Rule 60(b) motion if filed more than ten days after entry of the order or judgment. *Am. Ironworks & Erectors Inc. v. N. Am. Constr. Co.*, 248 F.3d 892, 898-99 (9th Cir. 2001); *see also Fabian v. Reed*, 707 F.2d 147, 148 n.1 (5th Cir. 1983) (document styled as a motion for reconsideration filed within 10 days of entry of the judgment is treated as a motion to alter or amend the judgment under Fed. R. Civ. P. 59(e)).

B. RULE 52 AND 59 MOTIONS [12.20.0]: Both Federal Rules of Civil Procedure 52(b) and 59 apply in habeas proceedings. *Browder v. Illinois Dep't of Corrections*, 434 U.S. 257, 270-71 (1978).

1. Rule 52(b) Motion To Amend Findings [12.21.0]: Rule 52(b) allows a movant who believes the court's findings or conclusions are erroneous to file a motion to alter or amend the findings.

A motion to amend findings must be filed no later than 10 days after entry of judgment. Fed. R. Civ. P. 52(b). A final judgment requiring a separate document under Fed. R. Civ. P. 58(a) is "entered" when the judgment is both entered in the civil docket under Rule 79(a), and is set forth on a separate document or 150 days have run from entry of the judgment in the civil docket pursuant to Fed. R. Civ. P. 79(a), whichever occurs first. Fed. R. Civ. P. 58(c)(2). The court cannot extend the 10-day time period for filing the motion. Fed. R. Civ. P. 6(b)(2). The motion must be in writing and state with particularity the grounds for the motion. Fed. R. Civ. P. 7(b).

Grounds for making a Rule 52(b) motion include an intervening change in controlling law, manifest mistake of fact or law, the existence of evidence not previously available, or relief is necessary to prevent manifest injustice. *See Nat'l Metal Finishing Co. v. Barclays/American Commercial, Inc.*, 899 F.2d 119, 123-24 n.2 (1st Cir. 1990) (recognizing that frequently articulated grounds for granting a Rule 52(b) motion include "manifest error of law or fact," "newly discovered evidence," and "an intervening change in the law"); *accord U.S. ex rel. Russo v. Attorney General of Illinois*, 780 F.2d 712, 715 n.4 (7th Cir. 1986).

When timely filed, a motion to amend findings tolls the time for filing an appeal, Fed. R. App. P. 4(a)(4)(A), and continues to toll until the date the motion is denied and entered in the civil docket (there is no separate document requirement, Fed. R. Civ. P. 58(a)(2); 58(c)(1)). See, *infra*, Effect Of Post-Judgment Motions On Appeal Time-Frame, page 758.

The district court's denial of a Rule 52(b) motion is reviewed under an abuse of discretion standard. *Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 673 (3d Cir. 1999).

2. Rule 59(a) New Trial Motions [12.22.0]: Rule 59 does not enumerate grounds on which the court may order a new trial. It only states that a new trial may be ordered after a nonjury trial “for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.” Fed. R. Civ. P. 59(a)(1)(B). The court may “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.” Fed. R. Civ. P. 59(a)(2).

Motions for new trial must be filed no later than 10 days after entry of judgment. Fed. R. Civ. P. 59(b). A final judgment requiring a separate document under Fed. R. Civ. P. 58(a) is “entered” when the judgment is both entered in the civil docket under Rule 79(a), and is set forth on a separate document or 150 days have run from entry of the judgment in the civil docket pursuant to Fed. R. Civ. P. 79(a), whichever occurs first. Fed. R. Civ. P. 58(c)(2). The court cannot extend the 10-day time period for filing the motion. Fed. R. Civ. P. 6(b)(2). However, the court may treat an untimely motion for new trial as a motion for relief from judgment if the grounds asserted in support of a new trial also support Rule 60(b) relief. *United States v. One Urban Lot*, 882 F.2d 582, 584 (1st Cir. 1989). The motion for new trial must be in writing and state with particularity the grounds for the motion. Fed. R. Civ. P. 7(b).

When the motion is supported by affidavits, the affidavits must be served with the motion. Fed. R. Civ. P. 59(c). The party opposing the new trial motion has 10 days after service of the moving party’s affidavits to file counter-affidavits. Fed. R. Civ. P. 59(c). This period can be extended 20 days by the court for good cause shown or by stipulation of the parties. Fed. R. Civ. P. 59(c). The court is authorized to allow the filing of reply affidavits. Fed. R. Civ. P. 59(c).

When timely filed, a new trial motion tolls the time for filing an appeal, Fed. R. App. P. 4(a)(4)(A), and continues to toll until the date the motion is denied and entered in the civil docket (there is no separate document requirement, Fed. R.