

40 Years

Working Together for Children
1976 - 2016



June 14 – 17, 2016
Merrillville, Indiana

Indiana Child Support Conference

Rule 60(B)

Relief from judgment or order

How to Use

How to Respond

Presenter:

William Welch
Staff Attorney

Indiana Prosecuting Attorneys Council

302 W Washington St, Rm E-205

Indianapolis, IN 46204

Tx: 317/232-1836

Email: wwelch@ipac.in.gov

Copyrighted Materials Fair Use Notification

This document may contain copyrighted material whose use has not been specifically authorized by the copyright owner. The Presenter is making this presentation available for the purposes of educating and training the practitioners to which this presentation is directed. We believe that this constitutes a 'fair use' of the copyrighted material as provided for in section 107 of the U.S. Copyright Law. If you wish to use this copyrighted material for purposes of your own that go beyond 'fair use,' you must obtain permission from the copyright owner.

N

N

Trial Rule

Heartburn Relief

60B

PREVENTS & RELIEVES

HEARTBURN Associated
with Acid Indigestion
& Sour Stomach
Caused By Child
Support Cases

80 Tablets
(80 Doses)

For Relief
from Painful
Court Orders

ACTUAL SIZE



Trial Rule 60(A)

Clerical Mistakes

- Court can correct at any time
- On the Court's Initiative
- Or upon Motion of a Party

Trial Rule 60(A)

Clerical Mistakes

- Mistake not the result of judicial function
- Not a Mistake of Substance

Trial Rule 60(B)

The Child Support Practical Approach

- Most Likely Provisions
- Rules that go with it
- Example Scenarios

Some General Rules

Not a substitute for direct appeal

Denial of a TR60(B) Motion is final judgment and appealable

Some General Rules

Burden of Proof is on
the person moving
for relief

Focus: Circumstances
that could not have
been discovered

Trial Rule 60(B)

(B) Mistake--Excusable neglect--Newly discovered evidence--Fraud, etc. On motion and upon such terms as are just the court may relieve a party or his legal representative from a judgment, including a judgment by default, for the following reasons:

Rule 60 (B)(1)



Mistake



Surprise



Excusable
Neglect

Rule 60 (B)(1)

Mistake,
Surprise
or
Excusable
Neglect

- Not more than 1 year after judgment
- Must allege a meritorious claim or defense
- Court has broad discretion
- Finding turns on particular facts of each case
- Burden is on the moving party

Meritorious Defense

Must show that if the case were tried on the merits, a different result would be reached.

Must show enough admissible evidence to make a prima facie showing

An allegation that but for the excusable neglect the action would have been defended is insufficient

Rule 60 (B)(2)



Any Ground for Motion To Correct Error

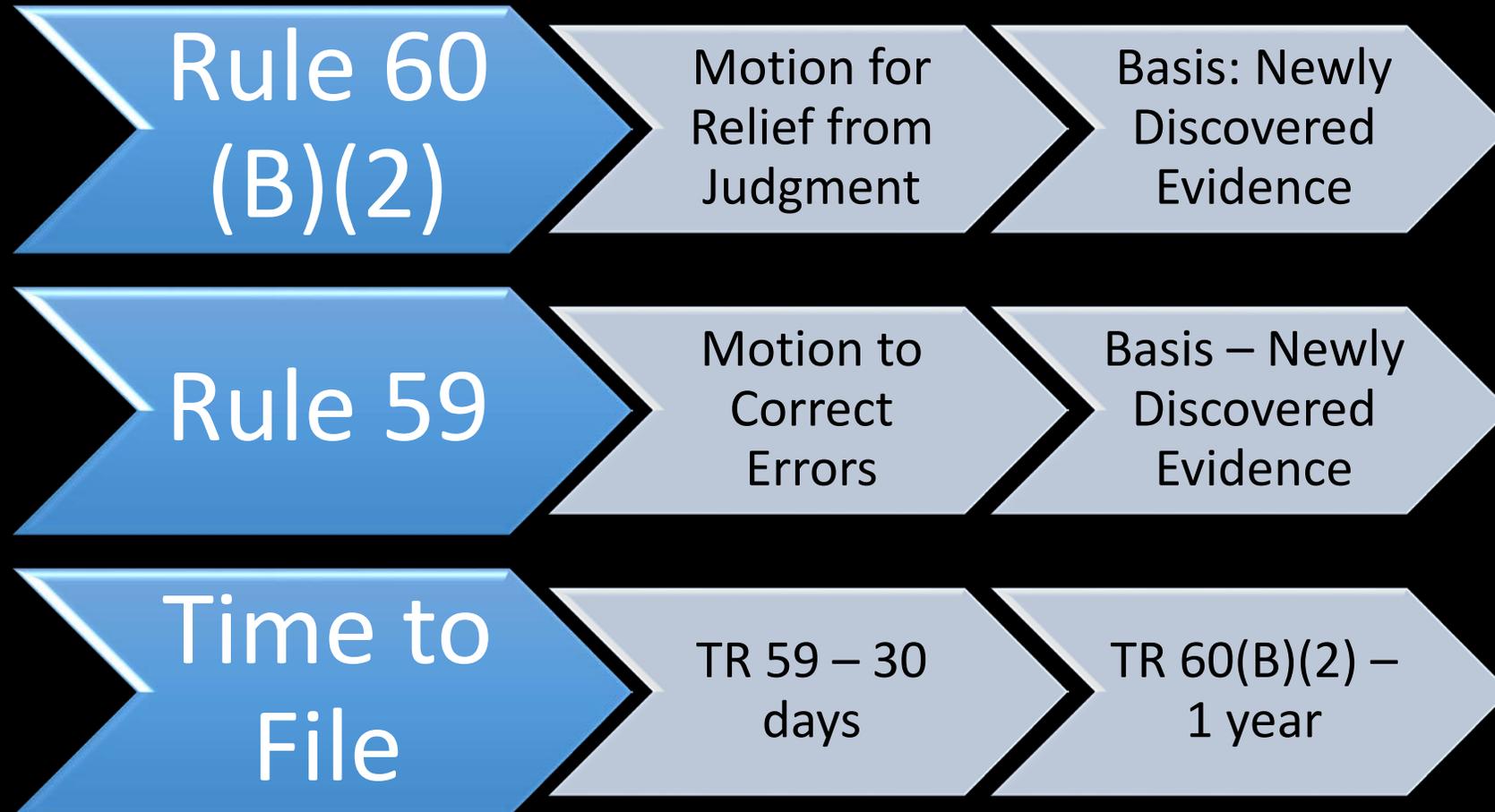
- Newly Discovered Evidence
- Could not have been discovered
- By due diligence
- In time to move for Motion to Correct Errors

Rule 60 (B)(2)

Any
Ground for
Motion to
Correct
Error

- Not more than 1 year after judgment
- Must allege a meritorious claim or defense

Comparison



Rule 60 (B)(2)

Evidence

- Must be Material
- Not merely Cumulative
- Would have altered the result

Rule 60 (B)(2)

Evidence

- Must have been in existence at time of contested decision

Rule 60 (B)(2)

Due Diligence

- More than bare assertion
- Set out facts showing due diligence
- Methods of discovery reasonably available

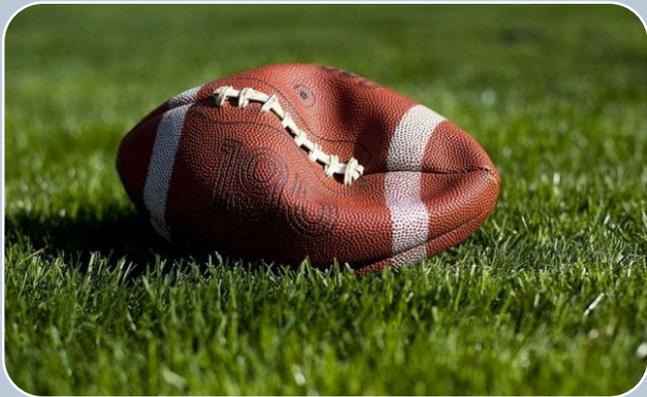
Rule 60 (B)(3)



Fraud



Misrepresentation



Misconduct

Rule 60 (B)(3)

Fraud,
Misrepresentation
or other
Misconduct

- Not more than 1 year after judgment
- Must allege a meritorious claim or defense

Rule 60 (B)(3)

AND INTO REALITY!!!!

I just hate it when this happens...

Rule 60 (B)(3)

One Year Time limit in Fraud Cases

- Remember – Issue of Equity
- Fraud on Court – practically no time limit regardless of rule.

Rule 60 (B)(3)

Fraud

- Material Representation of Fact
- That the representation is false
- Made with knowledge or reckless ignorance of falsity
- Caused detrimental reliance by another

Rule 60 (B)(3)

Misrepresentation

- Same as Fraud
- Used interchangeably

Rule 60 (B)(3)

Misconduct

- Can be based on violation of Code of Professional Responsibility
- Can be based on accidental behavior

Rule 60 (B)(3)

Misconduct

- Must still show that Misconduct (like fraud or misrepresentation) substantially inhibited the party from fully and fairly preparing the case

Rule 60 (B)(6)



Judgment



is



Void

Rule 60 (B)(6)

Judgment
is
Void

- Filed within Reasonable Time
- Does NOT need meritorious defense

Rule 60 (B)(6)

What is Reasonable Time?

Rule 60 (B)(6)

After viewing the Rule and analyzing the case law....

I Have No Idea!!!

Rule 60 (B)(6)



Rule 60 (B)(6)

Reasonable time under subdivision (B) varies with the circumstances of each case.

YOU'RE MAD.
BONKERS.
OFF YOUR HEAD...BUT
I'LL TELL YOU A
SECRET...ALL OF THE
BEST PEOPLE
ARE.

ALICE IN WONDERLAND

Rule 60 (B)(8)



“How about this slogan: ‘If you are unhappy for any reason we will feel really bad’.”

Catch-all
Rule

Any Reason
Justifying Relief

Rule 60 (B)(8)

Any
Reason
Justifying
Relief

- Filed within Reasonable Time
- Must allege a meritorious claim or defense
- Cannot be for Reasons listed in 1,2,3 and 4.

Rule 60 (B)(8)

Extraordinary Circumstances

Other than those in Preceding Subsections

Order has created an injustice

Rule 60 (B)(8)

How to deal with (B) (8)

No
Meritorious
Defense

Circumstances
fall within
Rules 1-7

Filer - No
Clean Hands

Responder is
an Innocent
Party

Just One More Provision!



Trial Rule 60B
as an
Independent
Action

Independent Action for Relief

**WAIT!!!
WHAT??????**

to relieve a party from
or for fraud upon the court.

Independent Action for Relief

This rule does not limit the power of a court

to entertain an independent action

to relieve a party from a judgment, order or proceeding or for fraud upon the court.



State v. Gaw, 2015 Ind. App. LEXIS
745 (Ind. Ct. App. Dec. 10, 2015)

State v. Gaw, 2015 Ind. App. LEXIS

Actions brought under 60(B)(8) must be filed in the court which issued the judgment or order

A court that issues a dissolution decree retains exclusive and continuing responsibility for any future modifications and related matters

Rule 60(B) Relief from Judgment or Order

Rule 60(B) Relief from Judgment or Order

Thanks IPAC
Pharmacy!
I feel much better
now!

THANKS FOR COMING!

Questions?

- William Welch
- Staff Attorney
- Indiana Prosecuting Attorneys Council
- 302 W Washington St, Rm E-205
- Indianapolis, IN 46204
- Tx: 317/232-1836
- Email: wwelch@ipac.in.gov