

# Rule 60(b): Essential Points

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Child Support Enforcement: Representing Respondents

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# Rule 60(b)

- Relief from a “final judgment, order, or proceeding”
  - Although child support orders may be modified, they are “final” for purposes of 60(b).
    - *Coleman v. Coleman*, 74 N.C. App. 494 (1985).
- Rule 60 is *the* avenue (under the Rules) for getting reversal of a child support order once appeal and Rule 59 deadlines have passed.

# Rule 60(b)

- Grounds for relief are based on various circumstances, not errors of law.
  - Rule 60 is not to be used to correct errors of law.
    - *E.g., Hagwood v. Odom, 88 N.C. App. 513 (1988).*
  - Rule 60 is not a substitute for appellate review or the use of Rule 59 (motions for new trial).
    - *E.g., Jenkins v. Richmond County, 118 N.C. App. 166 (1995).*

# Reasons for Relief

- (1) Mistake, inadvertence, surprise, or excusable neglect;
  - ❑ Excusable neglect: Must show excusable neglect *and* prima facie case for a meritorious defense.
- (2) Newly discovered evidence which by due diligence could not have been discovered for Rule 59 motion;
- (3) Fraud, misrepresentation, or other misconduct of adverse party;
- (4) Judgment is void;
- (5) Judgment has been satisfied, released or discharged, or 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 judgment.

# Timing of Motion

- Reasons (1), (2), (3): Within 1 year
- All reasons: Within a reasonable time
  - “Reasonable time” depends upon the circumstances of the case. *E.g., Brown v. Windham, 104 N. C. App. 219 (1991); Nickels v. Nickels, 51 N.C. App. 690 (1981).*
  - If brought for reasons (1), (2), (3) and within 1 year, court may still find that it was *not* within a reasonable time. *Clendening v. Sears, 152 N.C. App. 477 (2002).*
- “Void” judgments: Court has no jurisdiction, so motion can be brought any time. E.g., failure to serve = no personal jurisdiction

# Timing of Motion

- 60(b)(6) cannot be used after one year where basis for motion clearly would have fallen under (1), (2), or (3).
  - *Richmond County Child Support Agency v. Adams*, 153 N.C. App. 512 (2002) (affirming denial of putative father's 60(b)(6) motion to void his acknowledgment of paternity because motion fell within “mistake” or “fraud” provisions.)

# Timing of Motion

- *Guilford County Child Support Office v. Mason*, 169 N.C. App. 842 (2005) (unpub'd) (disallowing Rule 60 motion brought after one year where basis of motion was misrepresentation by the child's mother of the movant's paternity).



# You Know the Law, Now What?

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# USING RULE 60 B: Paternity

- Goal
  - Set aside an acknowledgement/adjudication of paternity.
  - Order DNA test because now paternity is back in issue. ( **N.C. Gen. Stat. § 8-50.1(b1)** )

# USING RULE 60 B:Paternity

- Most often filed under:
  - 60 b (1)
    - Mistake, inadvertence, surprise, excusable neglect.
  - 60 b (2) New evidence.
    - Client had DNA test and discovers he isn't the father.
  - 60 b (3) Fraud
    - Mother tells client he is not the father.

\*\*1 year time limit runs from entry of Order establishing paternity , not from putative father signing acknowledgement.

# USING RULE 60 B: Service Issues

- The defenses/objections of lack of personal jurisdiction and insufficiency of service of process are covered under Rule 12. Per Rule 12 they are to be asserted by motion prior to a responsive pleading, or in a responsive pleading to the complaint.
- Obviously, if your client was not served, or not served properly they would not necessarily know to respond. 60 b (4) is your answer—the Order is void.

# USING RULE 60 B (4)

## Service Issues

- 60 b (4)- Order is void. No time limit
  - Use when there is a personal jurisdiction issue or insufficiency of service of process and the time to assert the defense under Rule 12 has passed. (See Rule 4 for service rules.)

\*\*\*If your client was not present when the order was entered investigate service issues.



# USING RULE 60 B: Service Issues

- If return of service indicates service correctly made there is a presumption of valid service. You will need more than your client's affidavit that he did not live there. **293 N.C. 67**
- If return of service is not valid on its face you are in good shape.

# USING RULE 60 B

- Other possibilities?
  - Fraud concerning income?
  - Fraud concerning extraordinary expenses?
  - Mistake-wrong worksheet used?

