

By Judge Raymond W. Mitchell and Mary Patricia Benz

Appellate Practice in **Illinois**

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# Motions After Judgment in Illinois and Federal Jury Trial Practice



**Post-trial (or postjudgment) motions are an important step in the appellate process in civil jury cases. Every appellate practitioner should have a thorough understanding of the rules governing those motions (and the steps that precede them).**

**T**HE TERM “POST-TRIAL MOTION” IS USED IN ILLINOIS rules to describe motions directed to a judgment entered on a jury verdict. *See* 735 ILCS 5/2-1202, 2-1203. The term is not ordinarily used in federal practice. *See* Fed. R. Civ. P. 50, 59.

The important Illinois statutes and rules that govern post-trial motions in jury cases are 735 ILCS 5/2-1202 and Illinois Supreme Court Rule 366(b)(2). The most important rules in federal practice are Rules 50 and 59 of the Federal Rules of Civil Procedure. In both state and federal practice, the primary purpose of postjudgment motions is the same—to preserve issues for appeal. As explained below, postjudgment motions are prerequisites to seeking many kinds of relief on appeal, including especially judgment as a matter of law (judgment n.o.v.). The movant may also be interested in obtaining relief from the trial judge, such as, e.g., remittitur, or a new trial.

### **Highlights of State and Federal Postjudgment Motion Practice**

The rules of postjudgment motion practice differ significantly between Illinois and federal courts. The principal differences noted below are in the type and content of motions and in their timing.

#### **Postjudgment Motions For Judgment As A Matter Of Law And New Trial**

- In Illinois, the losing party ordinarily files a single, written, post-trial motion seeking in specific terms all relief directed to the judgment. In federal practice, the losing party often files two separate written motions, a Rule 50 motion seeking judgment as a matter of law and alternatively a new trial, and a Rule 59 motion seeking a new trial or other relief based upon alleged trial errors and other grounds.
- In both state and federal practice, the successful party may file a postjudgment motion seeking to alter or amend the judgment, such as by adding prejudgment interest.
- In federal practice, a postjudgment motion seeking judgment as a matter of law pursuant to Rule 50 must be preceded by a pre-verdict motion seeking judgment as a matter of law on the same grounds. A pre-verdict motion is not required in state practice in order to seek judgment n.o.v. in the post-trial motion.

#### **Time for Filing**

- In state practice, a party may file a post-trial motion within 30 days after judgment. The time can be extended within the 30-day period. There is no automatic stay of enforcement during the 30-day period, but a discretionary stay can be requested from the trial court.
- In federal practice, the time for filing Rule 50 and Rule 59 motions is limited to 10 days (as computed in accordance with

Rule 6(a) of the Federal Rules of Civil Procedure, excluding weekends and certain court holidays). That time cannot be extended. An automatic stay of enforcement is in effect for most judgments during that period (without the need for security) pursuant to Rule 62(a) of the Federal Rules of Civil Procedure.

- The deadline for Rule 50 and Rule 59 motions will change on December 1, 2009. The time for filing those federal postjudgment motions (as well as the automatic stay of enforcement) will be extended to 28 days after the entry of judgment, but Rule 6(a) will not apply to exclude weekends and specified court holidays. Like the current rules, the amended rules do not allow a court to extend the time for filing Rule 50 and Rule 59 motions.

#### **Attorneys’ Fees**

- In state practice, requests for attorneys’ fees are treated as a separate claim, which may affect the finality of (and thus the ability to appeal) the judgment to which the claim for fees relates.
- In the Northern District of Illinois, attorneys’ fees (other than fees sought as damages) are often awarded in a separate proceeding. Requests for fees are not ordinarily included in postjudgment motions.

#### **Stay Of Enforcement And Time For Appeal**

- In Illinois and federal practice, the timely filing of a postjudgment motion in proper form stays enforcement of most judgments. The stay remains in effect until the disposition of the last post-trial motion directed to the judgment. Security is not ordinarily required.
- In both state and federal courts, the filing of a postjudgment motion extends the time for filing a notice of appeal in most cases until 30 days after the disposition of the last postjudgment motion.

### **Illinois Post-Trial Motions**

**Post-trial Motion Procedure.** Section 2-1202 of the Illinois Code of Civil Procedure governs motions for judgment n.o.v. and for new trial in jury cases. *See* 735 ILCS 5/2-1202. Unlike federal practice, Illinois statutes and rules require that all relief, including requests for judgment notwithstanding the verdict (i.e., judgment as a matter of law) and new trial, be requested in a single, written post-trial motion. *See* Ill. Sup. Ct. R. 274.

In Illinois, a post-trial motion may seek judgment n.o.v., even if no motion for directed verdict was made prior to submission of the case to the jury. Like a motion for directed verdict, a motion for judgment n.o.v. may be granted only if all the evidence, viewed in its aspect most favorable to plaintiff, so overwhelmingly favors defendant that a contrary verdict could never stand. *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510, 229 N.E.2d 504, 513-14 (1967).

Under the “American rule,” attorneys’ fees are ordinarily not recoverable by a successful litigant. But fees may be recovered by a prevailing party under some statutes or contracts. Illinois rules do not provide a special procedure for fee petitions. Requests for fees are treated as a separate claim and are ordinarily not presented in a post-trial motion.

A motion for directed verdict may be made at the close of the evidence. If such a motion is filed, the specific arguments made in support of judgment n.o.v. in the pre-verdict motion must be renewed in the post-trial motion to preserve them. *See* Ill. Sup. Ct. R. 366(b)(2)(iii).

A party seeking a new trial must include a request for new trial in the post-trial motion. *See* 735 ILCS 5/2-1202(e). Relief may be requested in the alternative, or it may be conditioned upon the denial of other relief. *See* 735 ILCS 5/2-1202(b).

#### **Time for Filing and Extensions of Time.**

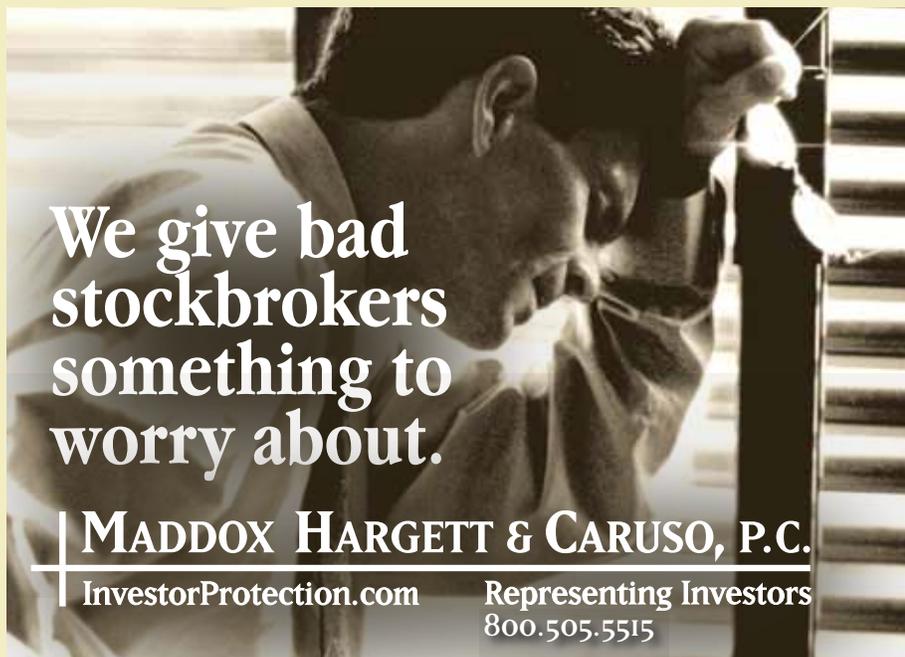
The post-trial motion must be filed within 30 days after the entry of judgment (or after the discharge of the jury if no verdict is reached). The court may extend the time for filing the motion if a motion for extension of time is granted within the 30-day period (or within any extension previously granted). *See* 735 ILCS 5/2-1202(c); *Lowenthal v. McDonald*, 367 Ill. App. 3d 919, 856 N.E.2d 1118 (2d Dist. 2006) (trial court loses jurisdiction 30 days after judgment is entered unless post-trial motion is filed or motion for extension is granted).

**Specificity And Waiver.** The post-trial motion must “contain the points relied upon, particularly specifying the grounds in support thereof and must state the relief desired.” *See* 735 ILCS 5/2-1202(b). All points for appeal of the judgment are waived if they are not included in the single post-trial motion. *See* Ill. Sup. Ct. R. 366(b)(2)(iii). Even legal issues that were not tried to the jury, such as, e.g., issues raised in unsuccessful summary judgment motions, must be included in the post-trial motion to avoid waiver. *See Hanson-Suminski v. Rohrman Midwest Motors, Inc.*, 386 Ill. App. 3d 585, 898 N.E.2d 194 (1st Dist. 2008); *Metropolitan Life Ins. Co. v. Nauss*, 226 Ill. App. 3d 1014, 1019, 590 N.E.2d 524, 528 (4th Dist. 1992).

**Effect on Enforcement of Judgment.** A post-trial motion “filed in apt time” stays enforcement of the judgment. *See* 735 ILCS 5/2-1202(d). Unlike federal practice, there is no automatic stay of enforcement during the 30-day period (or extended period) before the post-trial motion is filed. The trial court may grant a discretionary stay pursuant to 735 ILCS 2-1305. Security may be required. Once a post-trial motion is filed, an automatic stay of enforcement will take effect until the last postjudgment motion is ruled upon.

**Effect on Time to Appeal.** The time to appeal begins to run upon disposition of the last postjudgment motion directed to the judgment. *See* Ill. Sup. Ct. R. 303(a).

**Attorneys’ Fees.** Under the “American rule,” attorneys’ fees are ordinarily not recoverable by a successful litigant. But fees may be recovered by a prevailing party under some statutes or contracts. Illinois rules do not provide a special procedure for fee petitions. Requests for fees are treated as a separate claim and are ordinarily not presented in a post-trial motion. *F.H. Prince & Co., Inc. v. Towers Financial Corp.*, 266 Ill. App. 977, 983, 640 N.E.2d 1313, 1317 (1st Dist. 1994). On the filing of a claim for attorneys’ fees, the judgment to which the fee claim relates becomes nonfinal and thus not appealable until the fee claim is ruled on or the court makes a finding pursuant to Supreme Court Rule 304(a) that “no just reason for delaying enforcement of appeal or both.” A request for fees may require



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a separate evidentiary hearing. *See Trossman v. Philipsborn*, 373 Ill. App. 3d 1020, 1056-57, 869 N.E.2d 1147, 1176-77 (1st Dist. 2007).

**Postjudgment Motions In Non-jury Cases.** Postjudgment motions may be filed in non-jury cases, but they are not required to preserve issues for appeal. *See* Ill. Sup. Ct. R. 366(b)(3)(ii). A party may file the motion within 30 days after entry of the judgment or within any extension of time granted before the expiration of the 30-day period. *See* 735 ILCS 5/2-1203(a). Less specificity may be required. As in jury cases, the timely filing of the postjudgment motion stays enforcement of the judgment. *See* 735 ILCS 5/2-1203(b). Likewise, the time to appeal begins to run after the disposition of the last pending postjudgment motion directed against the judgment. *See* Ill. Sup. Ct. R. 303(a).

**Postjudgment Motions in Federal Practice Rules 50 and 59.** As noted above, Rules 50 and 59 of the Federal Rules of Civil Procedure are the two most important rules

in federal postjudgment motion practice. Rule 50 governs motions for judgment as a matter of law in jury cases. Rule 59 governs most requests for a new trial and all requests to alter or amend judgments in both jury and non-jury cases.

**Rule 50 Motion For Judgment.** The standard for granting a Rule 50 motion for judgment is stated in the rule. A District Court may resolve an issue against a party, or grant judgment as a matter of law against a party, when the party has been fully heard on an issue at the jury trial, and “a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue...” *See* Fed. R. Civ. P. 50(a).

A Rule 50 motion for judgment must be filed during trial before the case is submitted to the jury to preserve issues for appeal. *See* Fed. R. Civ. P. 50(b). The motion may, but need not, be filed at the close of the evidence. The renewed motion after judgment is limited to the grounds raised in the pre-verdict motion. Some courts hold that a party can waive an opponent’s failure to file a legally sufficient pre-verdict motion.

*See Marshall v. Columbia Lea Regional Hosp.*, 474 F.3d 733 (10th Cir. 2007).

**Time For Filing Renewed Rule 50 Motion.** Until December 1, 2009, the renewed Rule 50 motion for judgment as a matter of law must be filed no later than 10 days following the entry of judgment. Rule 58 of the Federal Rules of Civil Procedure determines when and how judgment is entered in jury cases. The 10-day period is computed as provided in Rule 6(a) of the Federal Rules of Civil Procedure; therefore, intermediate Saturdays, Sundays, and specified legal holidays are excluded from the 10-day period. On December 1, 2009, the time will be extended to 28 days after judgment. Neither the current nor the new time limit can be extended. *See* Fed. R. Civ. P. Rule 6(b). The 28-day rule will not exclude weekends or holidays.

A timely Rule 50(b) motion is a jurisdictional prerequisite to appeal based on insufficiency of evidence. *See Unitherm Food Systems Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394, 126 S. Ct. 980 (2006). Failure to file a timely Rule 50(b) motion also prevents the

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Court of Appeals from granting a new trial based upon insufficiency of the evidence. **Motion For New Trial.** A request for new trial may be included in a Rule 50(b) motion or requested in a motion pursuant to Rule 59. In either case, the current time limit is 10 days after judgment is entered

computed in accordance with Rule 6(a). The period will be extended to 28 days on December 1, 2009. As noted above, the time cannot be extended. *See* Fed. R. Civ. P. 6(b). **Specificity Required.** Rule 7(b) of the Federal Rules of Civil Procedure requires

that grounds for relief requested in Rule 50 and Rule 59 motions must be stated with particularity. **Stay of Enforcement and Time for Appeal.** As in Illinois practice, enforcement of the judgment is stayed during the pendency of Rule 50 and Rule 59 motions. Rule 62(b) permits the court to require security. Rule 62(f) of the Federal Rules of Civil Procedure provides that the same stay permitted under Illinois rules applies to judgments entered by Illinois District Courts. Illinois rules do not require security to stay enforcement of the judgment while postjudgment motions are pending. *See* 735 ILCS 5/2-1202(d); 5/2-1402(m) (in Illinois, lien of judgment can be perfected by service of citation on judgment debtor). **Attorneys' Fees.** Rule 54(d)(2) of the Federal Rules of Civil Procedure permits District Courts to adopt local rules to address petitions for attorneys' fees and non-taxable costs pursuant to fee-shifting statutes or contracts. Non-taxable costs are litigation expenses other than those that may be awarded to the prevailing party by the clerk under Rule 54(d)(1) and 28 U.S.C. §1920. In the Northern District of Illinois, Local Rule 54.3 (L.R. 54.3) creates a separate proceeding for the adjudication of requests for attorneys' fees and non-taxable costs. The procedure set forth in the local rule does not affect the time for filing post-judgment motions or the time for appeal. Under L.R.54.3, the movant may file a "fee motion" no later than 90 days after judgment. Before the fee motion is filed, the movant must provide other parties with documentation (e.g., time records and bills) of the fees and that will be the subject of the motion. Before the fee motion is filed,



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the parties must also make an effort to agree about the amount of fees and non-taxable costs that should be awarded. If no agreement is reached, the respondent must produce time records, bills or other evidence documenting the fees and non-taxable costs incurred by the respondent. The fee motion must include a joint statement indicating the amount, if any, of the claimed fees and non-taxable expenses to which there is no objection. The parties may submit memoranda of law in support of their positions. The court will not ordinarily hold an evidentiary hearing.

After the District Court rules on the fee motion, any aggrieved party may appeal the order awarding or denying attorneys' fees. That appeal will ordinarily be separate from any appeal from the original judgment, but it may be consolidated with other pending appeals arising out of the original judgment. Any party may file a motion for instructions before undertaking the process set out in L.R. 54.3.

**Postjudgment Motions In Non-jury Cases.** Rule 52(b) of the Federal Rules of Civil Procedure governs motions for judgment as a matter of law or to amend findings of fact in non-jury cases. Currently, a Rule 52(b) motion must be made no later than 10 days after entry of judgment. As of December 1, 2009, the time will be extended to 28 days. As with Rules 50 and 59, the time limit for filing a motion under Rule 52(b) cannot be extended. See Fed. R. Civ. P. 6(b).

A Rule 52(b) motion may be made before judgment when the opposing party has been fully heard on the issues that are the grounds for the motion. The motion may be ruled upon before or after judgment. It is not necessary to renew the motion after judgment. A motion to amend findings under Rule 52(b) can be accompanied by a motion for new trial under Rule 59. See Fed. R. Civ. P. 52(b).

A Rule 52(b) motion is not necessary to preserve issues for appeal, but the timely filing of a Rule 52(b) motion after judgment

will stay enforcement of the judgment and toll the time for appeal until the motion is ruled upon. See Fed. R. Civ. P. 62(b), (f); Fed. R. App. P. 4(a)(4)(ii).

### Conclusion

Postjudgment motion practice is a critical step for appeals in jury cases. Important issues for appeal can be waived inadvertently by failure to follow the letter of the statutes and rules governing postjudgment motions. The careful practitioner should take steps well in advance of trial to determine the requirements of the applicable statutes and rules and to prepare to meet the strict deadlines they often impose. ■

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