

Appellate Tips

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How to Draft a Proposed Form of Judgment Under the New Rules

By: Jonathan P. Barnes

If you are in state court, remember that new rule changes took effect on January 1, 2017. The new version of Rule 54 includes several changes that will be important when drafting proposed forms of judgment. Here is a step-by-step process for preparing proposed forms of judgment under amended Rule 54.

First, consider whether you should include Rule 54(b) or (c) language in your proposed form of judgment. Whereas Rule 54(c) is proper when a decision adjudicates all the claims and all the parties, Rule 54(b) may be proper when there are still claims or parties remaining in the case. If you decide that Rule 54(b) language is appropriate, prepare a motion explaining why. If you decide that Rule 54(c) language is appropriate, no motion is needed.

Second, prepare a statement of costs, and a motion for attorney's fees if they are available. Under amended Rule 54(h), all claims for attorney's fees and costs must be resolved and included in the judgment before the judgment can be final under Rule 54(b) or (c). This has always been true for attorney's fees, but it represents a big change from the old rule regarding costs, which allowed successful parties to request their costs within ten days after judgment. The new version of Rule 54 provides three different deadlines for requesting your fees and costs, which you must do at the same time (if at all) under the new rule.

1. If the decision adjudicates all the claims and all the parties so that judgment is proper under Rule 54(c), you will have 20 days after the decision is filed to request an award for your fees and/or costs.
2. If you get a decision that adjudicates all of the claims against your clients only, filing a Rule 54(b) motion will trigger a 20-day deadline to request an award for your fees and/or costs.
3. In all other situations, e.g., if you decide not to move for entry of Rule 54(b) judgment, if the court denies your Rule 54(b) motion, or if a Rule 54(b) judgment is proper for some other reason, the clock will not start ticking on the 20-day deadline until after the court disposes of the remaining claims.

Third, draft your proposed judgment so that it includes the appropriate language of finality. Rule 54(b) judgments must state "there is no just reason for delay," while Rule 54(c) judgments must state "that no further matters remain pending." Also, be sure that your proposed form of judgment includes amounts for your fees and costs, if any; or leaves blank spaces for the court to complete with these amounts at a later time.

If the court enters judgment before you've had a chance to file a proposed form of judgment, you will need to file a Rule 59 motion to alter or amend the judgment in order to claim your costs and/or fees. If you have any questions about proposed judgments, the Jones, Skelton, & Hochuli appellate department is ready to help. 602-263-1700.

About the Author



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