

## Appellate Tips

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### **Be Aware Of Strict Post-Trial Motion Deadlines**

**By: Jennifer B. Anderson**

You've lost your trial, and want to tee up your case for an appeal. Some issues might need to be preserved through a post-trial motion. That is a subject for a different tip. But if you need or want to file a post-trial motion, there are strict deadlines for doing so. You need to know how to calculate them, and be prepared to move to strike an untimely motion filed by the opposing party.

#### **Most post-trial motions are due 15 days after entry of judgment.**

Post-trial motions are often critical to an appeal. These include renewed motions for judgment as a matter of law under Ariz. R. Civ. P. 50(b), motions to amend court findings in bench trials under Ariz. R. Civ. P. 52(b), motions for new trial under Ariz. R. Civ. P. 59(d), and motions to alter or amend the judgment under Ariz. R. Civ. P. 59(l). In the Arizona superior courts, these post-trial motions must be filed no later than 15 days after entry of judgment. Motions for relief from the judgment under Ariz. R. Civ. P. 60 are subject to different deadlines. But a Rule 60 motion now tolls the deadline for filing a notice of appeal if filed within 15 days of the judgment. ARCAP 9(e)(1)(E). Before the recent appellate rule changes, it did not. In federal court, the post-trial motion deadline is substantially longer—28 days from entry of judgment.

#### **The superior court generally may not extend the post-trial motion deadline.**

The superior court generally lacks jurisdiction to extend the deadline for post-trial motions. It may do so only if it finds: "(a) that a party entitled to notice of the entry of judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and (b) that no party would be prejudiced." Ariz. R. Civ. P. 6(b).

If the opposing party files a post-trial motion that is untimely, the proper response is to move to strike it.

#### **Always look at the actual judgment to determine the entry date.**

When calculating the post-trial motion deadline, always look to the file-stamp date on the actual judgment to determine the entry date. Never rely solely on the minute entry order giving notice of entry of judgment. The minute entry may have been filed days after judgment was entered. Also do not be confused by the date on which the judge signs the judgment. That date might be different from the actual entry date as well.

Intermediate Saturdays, Sundays, and legal holidays are included in the 15-day computation under Ariz. R. Civ. P. 6(a). No additional time is added for service under Ariz. R. Civ. P. 6(e) because the deadline is calculated from the actual entry of judgment, not service of a notice of entry.

#### **Miscalculating the post-trial motion deadline could affect the timeliness of a notice of appeal.**

A timely post-trial motion extends the deadline for filing a notice of appeal. But if the post-trial motion is untimely, the appeal deadline will not be extended.

Please don't hesitate to contact the appellate department at Jones, Skelton & Hochuli if you need help with post-trial matters. 602-263-1700.

### About the Authors



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