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Relief from Final Judgment Under Rule 60(b)(1) Due to Judicial Errors of Law

Rule 60(b)(1) of the Federal Rules of Civil Procedure provides that a court may relieve a party from final judgment for “mistake, inadvertence, surprise, or excusable neglect” within a “reasonable” time not to exceed one year.¹ There is significant disagreement among the federal circuit courts of appeals as to whether rule 60(b)(1) should be applicable to judicial errors of law.² Even those circuits that recognize judicial error as proper cause to invoke rule 60(b)(1) disagree about both the types of judicial error covered under the rule³ and the time constraints within which such a motion must be made.⁴

This Note seeks to resolve these conflicts by proposing a sensible reading of rule 60(b)(1) that reconciles the basic philosophies underlying differing interpretations of the rule. Part I examines the history of rule 60(b)(1) and the policies espoused by the courts and commentators in considering whether the rule should be applied to judicial errors of law and concludes that courts should employ the rule to correct obvious⁵ judicial errors of law. Part II recommends a broad scope for rule 60(b)(1) motions, proposing that the only type of alleged judicial error outside the reach of such a motion should be error induced by interpretation of ambiguous statutes or case law precedents. Part II suggests that this latter type of error is more appropriately examined in the appellate process or in a rule 59⁶ motion for new trial

1. FED. R. CIV. P. 60(b)(1) (adopted 1937; amended 1946, 1948). Rule 60(b) states in part: On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for . . . mistake, inadvertence, surprise, or excusable neglect. . . . The motion shall be made within a reasonable time, and . . . not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation.

Under the Rules Enabling Act of 1934 Congress delegated the power to make procedural rules to the Supreme Court. 28 U.S.C. § 2072 (1982). In 1935 the Supreme Court appointed an advisory committee to prepare and submit a draft of recommended rules, and in 1942 the Court designated a permanent committee to advise the Court with respect to amendments or additions to the rules. As the final step in the process, the Supreme Court reports the rules it wishes to come into force to Congress, in accordance with the Rules Enabling Act. “The existing situation in the federal courts . . . may be described as judicial rulemaking pursuant to a legislative delegation and subject to a congressional veto.” 4 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1001, at 30 (1969). The validity of this legislative veto arrangement is questionable after *Immigration & Naturalization Serv. v. Chadha*, 462 U.S. 919 (1983).

2. See note 43 *infra*. A judicial error of law might occur, for example, when a judge ignores or is unaware of a change in controlling decisional law. See *Schildhaus v. Moe*, 335 F.2d 529, 531 (2d Cir. 1964).

3. See note 43 *infra*.

4. See notes 56-59 *infra* and accompanying text.

5. See notes 44-47 *infra* and accompanying text for examples of “obvious” errors.

6. See note 25 *infra* for the scope of FED. R. CIV. P. 59.

or change in the judgment. Part III examines the question of the time period during which a rule 60(b)(1) motion ought be allowed. It argues that obvious errors of law should be correctable under a rule 60(b)(1) motion made within the time permitted for an appeal, and if an appeal is taken, made up until the appellate court begins review of the case, within an outside limit of one year.

I. RULE 60(b)(1) APPLICABILITY TO ERRORS OF LAW

A. *Language and History of Rule 60(b)(1)*

The text of rule 60(b)(1) does not specifically authorize motions based on errors of law, but under its language the rule has a potentially broad scope. Major operative terms such as "mistake" and "inadvertence" are not independently defined and can easily be interpreted to encompass errors of law. In addition, the history of rule 60(b)(1) suggests that a 1946 amendment to the rule was intended to provide for motions to correct judicial errors of law. The rule originally provided relief to a party only for *that party's* mistake or inadvertence.⁷ The advisory committee broadened the rule, feeling that relief under it should be given for mistakes of people other than the party filing the motion.⁸ The amendment can be interpreted as an attempt to simplify the method of obtaining relief from mistake, whether by a party or by a judge.⁹ Therefore, use of a rule 60(b)(1) motion to correct judicial errors of law is certainly not contrary to the rule's language and is arguably required by the intent behind the 1946 amendment to the rule.

B. *Policy Considerations in Applying Rule 60(b)(1) to Judicial Errors of Law*

Because the language of rule 60(b)(1) allows a wide range of interpretations, any inquiry into the rule's *proper* scope must center on pol-

7. The original version of the rule, in pertinent part, reads:

On motion the court . . . may relieve a party . . . from a judgment . . . taken against him through *his* mistake This rule does not limit the power of a court . . . to entertain an action to relieve a party from a judgment, order, or proceeding.

FED. R. CIV. P. 60(b) (emphasis added). Under a savings clause providing that the rule did not limit the power of the court "to entertain an action to relieve a party from a judgment, order, or proceeding," relief from judicial error apparent on the record could be obtained under a bill of review, a form of action abolished by the 1946 amendment. 7 J. MOORE & J. LUCAS, MOORE'S FEDERAL PRACTICE ¶ 60.15[8] (2d ed. 1985) [hereinafter cited as 7 MOORE'S FEDERAL PRACTICE]. The history of the rule is comprehensively analyzed in 7 MOORE'S FEDERAL PRACTICE, *supra*, ¶ 60.10.

8. The qualifying pronoun "his" has been eliminated on the basis that it is too restrictive, and that the subdivision [(b)] should include the mistake or neglect of [people other than the party filing the motion] which may be just as material and call just as much for supervisory jurisdiction as where the judgment is taken against the party through *his* mistake, inadvertence, etc.

FED. R. CIV. P. 60(b) advisory committee note (emphasis in original).

9. See 7 MOORE'S FEDERAL PRACTICE, *supra* note 7, ¶ 60.22[3].

icy considerations. Courts and commentators have advocated and weighed various policy considerations in deciding whether rule 60(b)(1) ought to apply to judicial errors of law. These considerations include conserving both judicial and party resources,¹⁰ preventing the use of rule 60(b)(1) as a substitute for appeal,¹¹ ensuring the continued viability of rule 59,¹² encouraging speedy disposition of cases,¹³ and preserving the finality of judgments.¹⁴ Use of timely rule 60(b)(1) motions to correct obvious errors of law made by the judge at trial can satisfactorily balance all of these policy considerations.

The interest in conservation of judicial and party resources is best served by allowing this use of a rule 60(b)(1) motion in the trial court.¹⁵ Principles of both efficiency and comity weigh in favor of allowing the trial judge to correct his or her own error before an appeal is taken.¹⁶ The use of a rule 60(b)(1) motion saves the parties' time and money by giving them a final adjudication on the merits in some cases months or even years earlier than if the correction had to be made on appeal.¹⁷ In addition, by employing a judge already familiar with the merits of the case, a rule 60(b)(1) motion prevents judicial inconvenience and expense by avoiding a duplication of effort in the trial and appellate courts.¹⁸ To these efficiency considerations the factor of comity must be added. Allowing trial judges to correct their own errors of law in clear cases is almost always preferable to the corrective action of appellate benches.¹⁹

It might be argued that a rule 60(b)(1) motion will not conserve resources because the nonmoving party will subsequently appeal the

10. See, e.g., *Lairsey v. Advance Abrasives Co.*, 542 F.2d 928, 931 (5th Cir. 1976) ("allowing the district court to consider the motion may be more efficient in the long run").

11. See, e.g., *Swam v. United States*, 327 F.2d 431, 433 (7th Cir.) ("Rule 60(b) was not intended to be an alternative method to obtain review by appeal or as a means of enlarging by indirection the time for appeal."), *cert. denied*, 379 U.S. 852 (1964).

12. See, e.g., *Silk v. Sandoval*, 435 F.2d 1266, 1268 (1st Cir.) (Interpreting rule 60(b)(1) to extend the ten-day time limit of rule 59 "loses sight of the complementary interest in speedy disposition and finality, clearly intended by Rule 59."), *cert. denied*, 402 U.S. 1012 (1971).

13. See, e.g., *Silk v. Sandoval*, 435 F.2d 1266, 1268 (1st Cir.), *cert. denied*, 402 U.S. 1012 (1971).

14. See, e.g., *Parks v. United States Life & Credit Corp.*, 677 F.2d 838, 841 (11th Cir. 1982) ("The strong interest in the finality of litigation demands rejection of appellant's suggestion" that a rule 60(b)(1) motion can be filed any time within one year.).

15. As Professor Moore states, "why should not the trial court have the power to correct its own judicial error under 60(b)(1) within a reasonable time . . . and thus avoid the inconvenience and expense of an appeal by the party which the trial court is now convinced should prevail?" 7 MOORE'S FEDERAL PRACTICE, *supra* note 7, ¶ 60.22[3], at 60-185-86.

16. See, e.g., *Lairsey v. Advance Abrasives Co.*, 542 F.2d 928, 931 (5th Cir. 1976).

17. Cf. *United States v. 329.73 Acres of Land*, 695 F.2d 922, 925 (5th Cir. 1983) ("One purpose of Rule 60(b)(1) is to permit the trial court to reconsider and correct 'obvious errors of law' without forcing the parties to engage the machinery of appeal.>").

18. See *Fackelman v. Bell*, 564 F.2d 734, 736 (5th Cir. 1977) ("For such obvious errors of law, it might well waste judicial energy to engage the machinery of appeal."); note 15 *supra*.

19. See note 15 *supra*.

same point.²⁰ However, appeal by the party opposing the motion is unlikely in cases of obvious error for three reasons. First, the trial judge, in allowing the motion, has already recognized an earlier mistake — as have at least one and probably both of the litigating parties.²¹ Second, specific and detailed consideration of the issue of law has gone into the amended decision, and this increased scrutiny will usually lead to a more correct judgment.²² Finally, the fact that judges are loath to reverse themselves and admit mistake suggests that an error corrected by a sustained rule 60(b)(1) motion is, in all likelihood, quite glaring. Allowing a party to file a rule 60(b)(1) motion rather than forcing an appeal for an obvious error of law will certainly not result in more appeals than would otherwise be taken.²³ Quite the contrary, because the party aggrieved at the trial stage will no longer have an incentive to appeal, many appeals will be eliminated on challenged points that can be resolved earlier in the better or obviously correct way.²⁴

Rule 59 of the Federal Rules of Civil Procedure provides that a party may file a motion for a new trial or a motion to alter or amend a judgment no later than ten days after entry of the judgment.²⁵ Some courts express fear that if a party could obtain relief from a mistake of law by a rule 60(b)(1) motion until the time for appeal expires,²⁶ the continued viability of rule 59 would be threatened.²⁷ The concern is

20. See Note, *Federal Rule 60(b): Finality of Civil Judgements v. Self-Correction by District Court of Judicial Error of Law*, 43 NOTRE DAME LAW. 98, 104 (1967). This analysis is not, however, necessarily out of line with the recommendation of this Note, which contends that the types of errors that are likely to be appealed regardless of the trial court's decision — those involving the interpretation of ambiguous precedent and points of law — remain outside the limits of a rule 60(b)(1) motion. See Part II *infra*.

21. The interpretation of rule 60(b)(1) recommended by this Note centers on the applicability of the rule to obvious errors of law. See Part II *infra*. The moving party has recognized the error and, because the error is obvious, the trial judge and the opposing party will easily recognize the error upon notice from the moving party.

22. Moreover, a trial judge considering a rule 60(b)(1) motion has the opportunity to focus on the specific issue before him or her without regard to the additional questions of law and fact presented at the trial.

23. The recommendation of this Note emphasizes the usefulness of the rule 60(b)(1) motion as a practical alternative to appeal within the appeal period. See notes 34-37 *infra* and accompanying text. If the motion is denied, the party is still within the appeal period and will, in all likelihood, appeal the obvious error.

24. See *Lairsey v. Advance Abrasives Co.*, 542 F.2d 928, 931 (5th Cir. 1976):
More significantly, allowing the district court to consider the motion may be more efficient in the long run. . . . [I]n some instances a decision by the district court on the motion will wash out the appeal. Permitting the district court to have the first bite at the issue is a direct way of reaching a problem which otherwise can [only] be attacked circuitously.

25. FED. R. CIV. P. 59(b) states: "A motion for a new trial shall be served not later than 10 days after the entry of the judgment." Similarly, FED. R. CIV. P. 59(e) states: "A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment."

26. The usual time limit for filing an appeal is 30 days. See note 56 *infra*.

27. See, e.g., *Scola v. Boat Frances, R., Inc.*, 618 F.2d 147 (1st Cir. 1980); *Hahn v. Becker*, 551 F.2d 741 (7th Cir. 1977); *Silk v. Sandoval*, 435 F.2d 1266 (1st Cir.), *cert. denied*, 402 U.S. 1012 (1971); *Swam v. United States*, 327 F.2d 431 (7th Cir.), *cert. denied*, 379 U.S. 852 (1964).

that the ten-day time limits of rule 59 would be rendered useless if the "reasonable time" limit of rule 60(b)(1) enveloped the substantive scope of rule 59.²⁸

However, a properly invoked rule 59 motion will retain its independent vitality even if rule 60(b)(1) is used to allow correction of judicial errors. First, rule 59(a) will continue to be the only dependable method of seeking a new trial.²⁹ Second, rule 59(e) will remain the only alternative for seeking reconsideration of an ambiguous point of law by the trial court without a new trial.³⁰ Third, rule 59(e) deals with a broader array of amendment-seeking factors (including many discretionary trial level rulings) than does rule 60(b)(1).³¹ Finally, if a party wants to toll the running of the time for appeal, the sole alternative is a motion under rule 59, because a rule 60(b)(1) motion does not affect the finality of judgment.³² It is already well recognized that there is considerable overlap between rules 59 and 60(b)(1);³³ yet,

But see Bank of Cal. v. Arthur Andersen & Co., 709 F.2d 1174 (7th Cir. 1983), in which a motion to correct a judgment filed 11 months after judgment was held timely under rule 60(b)(1). The trial judge mistakenly used a form that said that dismissal was on the merits when, in fact, the judge had not determined the merits of a pendent claim. The judge denied the plaintiff's motion to amend the judgment which was made within ten days of judgment, but one month later entered a clarification order making the previous judgment without prejudice as to the pendent claim. Confusion ensued and the appellate court held the second motion, 11 months after judgment, to be timely. On petition for rehearing, the court stated that this decision was not contrary to *Swam v. United States*, 327 F.2d at 431, or other similar precedent, because those decisions held merely that a rule 60(b)(1) motion could not be used as a substitute for appeal. The court further confused the basis for its holding by stating that the situation was more aptly described as a clerical error rather than an error of law, implying that rule 60(a) (which allows correction of clerical errors at any time) rather than rule 60(b)(1) controlled.

28. [The view] that "mistake" means any type of judicial error, makes relief under the rule for error of law as extensive as that available under Rule 59(e), which permits motions to "alter or amend judgments." Obviously any such motion presupposes a mistake. Indeed, the argument advanced is that a broad construction of "mistake" beneficially extends the ten-day limit for motions under Rule 59(e). Calling this a benefit loses sight of the complementary interest in speedy disposition and finality, clearly intended by Rule 59. Attempts to allay criticism on this score by saying that the "reasonable time" for filing a Rule 60(b) motion when it seeks reconsideration on a point of law is the appeal period, are an acknowledgement of the extent to which this construction of mistake undermines Rule 59(e). *Silk v. Sandoval*, 435 F.2d 1266, 1268 (1st Cir.), *cert. denied*, 402 U.S. 1012 (1971). *See also* *Swam v. United States*, 327 F.2d 431, 433 (7th Cir.) (plaintiff must file timely appeal or timely rule 59 motion to challenge district court's alleged error of law), *cert. denied*, 379 U.S. 852 (1964); Note, *supra* note 20, at 100 (commending the Seventh Circuit's approach, lest rule 59's time constraints assuring finality of judgments be undermined).

29. Rule 60(b)(1) does not provide for relief in the form of a new trial. *See* note 1 *supra*.

30. 6A J. MOORE, J. LUCAS & G. GROTHEER, JR., *MOORE'S FEDERAL PRACTICE* [59.12[1] (2d ed. 1984) [hereinafter cited as 6A MOORE'S FEDERAL PRACTICE].

31. Rule 59(e) can be used to change discretionary rulings of the court, such as to change a dismissal with prejudice to a dismissal without prejudice, or vice versa; to include an award of costs; to vacate a dismissal and allow amendment of a complaint; or to provide other types of relief. *See* 6A MOORE'S FEDERAL PRACTICE, *supra* note 30, ¶ 59.12[1].

32. "A motion under [rule 60(b)] does not affect the finality of a judgment or suspend its operation." FED. R. CIV. P. 60(b). *Cf.* *Communist Party of Ind. v. Whitcomb*, 414 U.S. 441, 445-46 (1974) (a rule 59(e) motion extends the time for appeal by suspending the finality of the judgment).

33. *See* 6A MOORE'S FEDERAL PRACTICE, *supra* note 30, ¶¶ 59.04[7] & 60.03[3].

mere shared purposes ought not to prevent application of rule 60(b)(1) to judicial errors of law.

Another policy concern is that the use of rule 60(b)(1) to correct judicial errors of law should not be allowed to substitute for appeal.³⁴ However, a motion to correct obvious judicial errors of law at the trial court level does not constitute a *harmful* substitute for appeal. The motion is, indeed, being used as a substitute for appeal, but it is only a substitute in the same sense as other provisions allowing a trial court to amend its own judgments — it provides an *efficient* alternative to appeal.³⁵ The motion would be a *harmful* substitute for appeal only if a party does not file an appeal, waits until after the time for appeal has run, and then seeks to reopen the case with a rule 60(b)(1) motion. In such a situation, the motion would undermine the time requirements of the appeal process.³⁶ However, limiting the scope of rule 60(b)(1) in this context to obvious errors³⁷ and limiting the time period in which such a motion can be used to the time allowed for appeal³⁸ will eliminate any motivation to use a rule 60(b)(1) motion as a substitute for the normal appeal process.

Finally, contrary to the arguments that some have advanced,³⁹ the use of a rule 60(b)(1) motion for the correction of judicial errors of law does not undermine any systemic interest in finality of judgments. The concern for finality centers on the “interest that each controversy eventually come to an end and the courts and the parties be left to proceed to other matters.”⁴⁰ The use of a rule 60(b)(1) motion to correct obvious judicial errors does not undermine this interest because the party seeking to use the motion would almost certainly file an appeal to correct an obvious error of law if not offered the option of proceeding under rule 60(b)(1).⁴¹ Thus, there would be no finality

34. See, e.g., *Chick Kam Choo v. Exxon Corp.*, 699 F.2d 693 (5th Cir.), *cert. denied*, 464 U.S. 826 (1983); *United States v. 329.73 Acres of Land*, 695 F.2d 922 (5th Cir. 1983); *Fox v. Brewer*, 620 F.2d 177 (8th Cir. 1980); *Swam v. United States*, 327 F.2d 431 (7th Cir.), *cert. denied*, 397 U.S. 852 (1964).

35. Several other rules are technically substitutes for appeal. See FED. R. CIV. P. 59(a) (“[a] new trial may be granted to all or any of the parties and on all or part of the issues [on motion served not later than ten days after the entry of judgment]”); FED. R. CIV. P. 59(e) (“[a] motion to alter or amend the judgment shall be served not later than ten days after entry of judgment”); FED. R. CIV. P. 60(a) (“clerical mistakes . . . may be corrected by the court at any time”). These alternative remedies promote efficient justice — just as the recommended use of a rule 60(b)(1) motion would do — without undermining the appeal process.

36. See, e.g., *Steinhoff v. Harris*, 698 F.2d 270 (6th Cir. 1983); *Parks v. United States Life & Credit Corp.*, 677 F.2d 838 (11th Cir. 1982); *Capital Realty Invs., Inc. v. Watson*, 608 F.2d 1137 (8th Cir. 1979); *Hoffman v. Celebrezze*, 405 F.2d 833 (8th Cir. 1969); *Schildhaus v. Moe*, 335 F.2d 529 (2d Cir. 1964).

37. See notes 43-47 *infra* and accompanying text.

38. See note 60 *infra* and accompanying text.

39. See Note, *supra* note 20, at 102.

40. See 6A MOORE'S FEDERAL PRACTICE, *supra* note 30, ¶ 60.02.

41. See *Barrier v. Beaver*, 712 F.2d 231 (6th Cir. 1983); *Parks v. United States Life & Credit*

even if use of a rule 60(b)(1) motion were denied. In addition, the interest in finality must be balanced against the interest in a correct decision after full consideration;⁴² by definition, an obvious error of law by the trial judge does not satisfy this interest in correctness.

II. TYPES OF ERROR PROPERLY INCLUDED IN A RULE 60(b)(1) MOTION

Once it is resolved that some judicial errors should be correctable under a rule 60(b)(1) motion, the issue of what types of error should be correctable by such a motion and what types should properly be left for the appellate process or a rule 59 motion remains. This Note argues that the trial judge should be allowed to correct all obvious errors of law under rule 60(b)(1).⁴³ Ignoring a change in controlling decisional law,⁴⁴ omitting interest on an award,⁴⁵ using the wrong time period to calculate benefits,⁴⁶ and misapplying benefit classifications⁴⁷ are examples of obvious error. In contrast, decisions based on sparse

Corp., 677 F.2d 838 (11th Cir. 1982); *Lairsey v. Advance Abrasives Co.*, 542 F.2d 928 (5th Cir. 1976).

42. See 6A MOORE'S FEDERAL PRACTICE, *supra* note 30, ¶ 60.02.

43. Obvious errors are variously characterized as simply "errors of law," *e.g.*, *Perez v. Duesberg-Bosson Co.*, 78 F.R.D. 439, 441 (E.D. Pa. 1978) (erroneous jury instruction confusing strict liability with negligence); "fundamental misconceptions of law," *e.g.*, 11 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2866, at 178 (1973); "errors obvious on the record" (from the old equitable bill of review, abolished in the federal courts by the 1946 amendment to rule 60), see 7 MOORE'S FEDERAL PRACTICE, *supra* note 7, ¶ 60.16[8]; or "judicial inadvertence," *e.g.*, *Capital Realty Invs., Inc. v. Watson*, 608 F.2d 1137, 1143 (8th Cir. 1979) (failure to award interest as constituting judicial inadvertence); see also 7 MOORE'S FEDERAL PRACTICE, *supra* note 7, ¶ 60.22[3], at 60-186 ("The cases that have dealt with the matter have held that when the mistake may fairly be characterized as the product of inadvertence, it is correctable within a reasonable time . . ."); *cf.* *Gila River Ranch, Inc. v. United States*, 368 F.2d 354 (9th Cir. 1966) (The court mistakenly interchanged the use of the words "judgment" and "verdict" in its damage award order.); *Hoffman v. Celebrezze*, 405 F.2d 833 (8th Cir. 1969) (omission of interest on award of past Social Security benefits).

The circuits have split on the issue of what judicial errors can be subject to a rule 60(b)(1) motion. The Eighth Circuit has held that judicial inadvertence is the only type of judicial error that can be corrected by such a motion. See *Fox v. Brewer*, 620 F.2d 177, 180 (8th Cir. 1980). The Fifth Circuit has held that only a "fundamental misconception of the law" or "judicial inadvertence" are correctable judicial mistakes under rule 60(b)(1). See, *e.g.*, *Lairsey v. Advance Abrasives Co.*, 542 F.2d 928 (5th Cir. 1976) (court failing to follow controlling decisional law displays fundamental misconception of the law); *Meadows v. Cohen*, 409 F.2d 750 (5th Cir. 1969) (wrong time period used in calculating Social Security benefits amounts to judicial inadvertence). The Third Circuit appears to allow correction of any type of judicial error, even an erroneous decision in the face of ambiguous precedent. See *Sleek v. J.C. Penney Co.*, 292 F.2d 256 (3d Cir. 1961) (reconsideration of default judgment denied by trial judge on ground that he thought he had no authority to do so; reversed by appellate court on ground that trial judge did have authority).

44. *Lairsey v. Advance Abrasive Co.*, 542 F.2d 928 (5th Cir. 1976); *Schildhaus v. Moe*, 335 F.2d 529 (2d Cir. 1964).

45. *Capital Realty Invs., Inc. v. Watson*, 608 F.2d 1137 (8th Cir. 1979); *Hoffman v. Celebrezze*, 405 F.2d 833 (8th Cir. 1969).

46. *Meadow v. Cohen*, 409 F.2d 750 (5th Cir. 1969).

47. *Steinhoff v. Harris*, 698 F.2d 270 (6th Cir. 1983).

or ambiguous precedent should be challenged on appeal or, at the discretion of the trial judge, through a rule 59 motion.⁴⁸ This recommendation is based primarily on pragmatic considerations of proper division of labor⁴⁹ within the judicial system. Under the principle of division of labor, the greatest judicial efficiency is achieved when, in a conceptual sense, the trial court decides the facts and applies the facts to the law, while the appellate court, in addition to its reviewing role, decides ambiguous questions of law on the basis of policy considerations.⁵⁰ In addition to saving judicial resources through greater efficiency of the appeal process, this assignment of tasks has the effect of saving judicial and party resources by eliminating many appeals altogether.⁵¹

Alternatively, freeing the trial court from the burden of rehearing an ambiguous point of law alleviates duplication of effort by the trial and appellate courts. It is better to let the appellate court deal with ambiguous points of law after the trial court has made a decision one way or another, because the question is likely to be appealed with or without any change in decision by the trial court.⁵² The appellate court must start fresh with the analysis, regardless of the trial court decision, so the trial court rehearing on the point is virtually useless.⁵³ In addition, appellate review is the only available medium for clarification and guidance to other trial courts dealing with similar issues. Therefore, to conserve judicial time and effort, it is best to have the

48. Courts have denied rule 60(b)(1) motions due to the absence of obvious errors of law when the following legal issues were disputed: the appropriate interest rate, in *United States v. 329.73 Acres of Land*, 695 F.2d 922 (5th Cir. 1983); the alleged premature shutting off of discovery, a statutory definition of "employer," the law of conflicts, and the doctrine of *forum non conveniens*, in *Alvestad v. Monsanto Co.*, 671 F.2d 908 (5th Cir.), *cert. denied*, 459 U.S. 1070 (1982); dismissal for failure to join an indispensable party, in *Silk v. Sandoval*, 435 F.2d 1266 (1st Cir.), *cert. denied*, 402 U.S. 1012 (1971); and a strict liability jury instruction, in *Perez v. Duesberg-Bosson Co.*, 78 F.R.D. 439 (E.D. Pa. 1978).

49. "In essence, the principle [of division of labor] states that the greatest efficiency of production can be achieved when the overall organizational task is divided so that each worker performs one small subtask or specialized job." Brass, *Job Design and Redesign*, in *SCIENTISTS, ENGINEERS, AND ORGANIZATIONS* 265, 269 (T. Connolly ed. 1983). As applied to the judicial function, this principle requires that the trial court decide, at a maximum, issues of fact and obvious questions of law. *Cf. Lairsey v. Advance Abrasive Co.*, 542 F.2d 928 (5th Cir. 1976) (trial judge in better position than appellate court to determine whether recent Georgia Supreme Court decision should be applied retroactively to the case at bar). On the other hand, questions involving subtle policy weighing are best left to the appellate court.

50. In addition to policy considerations, the appellate court is obviously bound by higher court precedent and statutory authority. However, the greater the ambiguity of this precedent, the more leeway the appellate court has to apply policy considerations.

51. See notes 15 & 20 *supra*.

52. A party will normally weigh his or her resources against his or her likelihood of success on appeal. The more ambiguous the precedent, the closer the party comes to having a 50% chance of success. Therefore, ambiguity increases the likelihood of appeal.

53. On issues of law the appeals court is not bound by the lower court's analysis. See 5A J. MOORE & J. LUCAS, *MOORE'S FEDERAL PRACTICE* ¶ 52.03[2] (2d ed. 1985) (conclusions of law are not binding).

more authoritative pronouncement of the appellate court on the ambiguous issues.

III. THE PROPER TIME FOR FILING A RULE 60(b)(1) MOTION

Assuming rule 60(b)(1) applies to the correction of obvious judicial errors of law, the issue remains as to the time period during which the motion should be allowed. Policy considerations espoused by the courts and commentators in determining the proper time constraints include the same considerations raised with regard to the scope of the rule: an interest in finality, concern about the use of rule 60(b)(1) as a substitute for appeal, and an interest in the continued viability of rule 59.⁵⁴ Consideration should obviously also be given to the language of the rule itself, which provides for use of a rule 60(b)(1) motion within a "reasonable" time, not to exceed one year.⁵⁵ Among courts that do allow use of rule 60(b)(1) to correct judicial errors, the majority maintain that the motion must be filed within the time allowed for notice of appeal.⁵⁶ Others hold that this avenue is available until the appeal goes to judgment if an appeal is filed.⁵⁷ Two circuits have applied the ten-day limit for rule 59 motions to rule 60(b)(1) motions,⁵⁸ and one circuit has held that the only per se limit, even when no appeal is filed, is the stated one-year limit, with each case to be determined according to its own facts.⁵⁹

This Note argues that if no appeal is filed, a rule 60(b)(1) motion is "seasonable" if it is filed within the time allowed for appeal. If an appeal is filed, a rule 60(b)(1) motion ought to be allowed until the appellate court actually begins review of the case. An outside limit of one year should apply in all cases.⁶⁰

54. See notes 11-14 *supra* and accompanying text.

55. FED. R. CIV. P. 60(b).

56. See *Barrier v. Beaver*, 712 F.2d 231, 234 (6th Cir. 1983); *Liberty Mut. Ins. Co. v. EEOC*, 691 F.2d 438, 441 (9th Cir. 1982); *Fox v. Brewer*, 620 F.2d 177, 179 (8th Cir. 1980); *Capital Realty Invs., Inc. v. Watson*, 608 F.2d 1137, 1143 (8th Cir. 1979); *Compton v. Alton S.S. Co.*, 608 F.2d 96, 102 (4th Cir. 1979); *International Controls Corp. v. Vesco*, 556 F.2d 665, 670 (2d Cir.), *cert. denied*, 434 U.S. 1014 (1977); *District of Columbia Fed. of Civic Assns. v. Volpe*, 520 F.2d 451 (D.C. Cir. 1975); *Gila River Ranch, Inc. v. United States*, 368 F.2d 354, 357 (9th Cir. 1966); *Schildhaus v. Moe*, 335 F.2d 529, 530-31 (2d Cir. 1964); *Sleek v. J.C. Penney Co.*, 292 F.2d 256, 258 (3d Cir. 1961). Under 28 U.S.C. § 2107 (1982), the time for requesting an appeal in ordinary civil action is 30 days, 60 days if the United States is a party, and 90 days if it is an admiralty proceeding.

57. See, e.g., *Parks v. United States Life & Credit Corp.*, 677 F.2d 838 (11th Cir. 1982); *Lairsey v. Advance Abrasives Co.*, 542 F.2d 928 (5th Cir. 1976).

58. See note 27 *supra*.

59. *Security Mut. Casualty Co. v. Century Casualty Co.*, 621 F.2d 1062, 1967 (10th Cir. 1980).

60. The one-year limit is not in full accord with the "reasonableness" interpretation recommended by this Note. However, since this Note deals with the recommended interpretation of the rule as it now stands, and the rule states a per se one-year limit, this Part deals with an interpretation of the rule within that one-year limit. When a case is appealed, it would better fit the policy recommendation of this Note to eliminate the one-year limit and to allow correction

Rule 60(b)(1) contains a "reasonable" time requirement with an outside limit of one year.⁶¹ One formulation of the reasonableness requirement, which has been accepted by some courts,⁶² centers on potential prejudice to the opposing party due to delay in filing the motion, considering as well whether the moving party had good reason for any delay.⁶³ Under this standard, the recommended interpretation satisfies the requirement of reasonableness, because before the time for appeal has run out and while a judgment is on appeal the parties recognize the possibility of reversal⁶⁴ and cannot justifiably rely on finality of the judgment.⁶⁵ Within this time period the moving party need not provide the court with a "good reason" for delay in order to meet the rule's reasonable time requirement because delay will not affect the interests of either the parties or the court.⁶⁶

The other approaches taken by the courts do not withstand analysis. The rationale behind the majority approach — that the motion may be allowed only within the time allowed for filing of an appeal — provides an equally strong argument for allowing a rule 60(b)(1) motion *after* the time for appeal has run if an appeal has been filed. The majority reason that a cut-off policy is required to promote the finality of judgments⁶⁷ and to prevent the rule from being used as a substitute for appeal.⁶⁸ However, the time between filing of a notice of appeal and actual appellate court consideration of the case is also a time period during which judicial errors of law may be resolved,⁶⁹ thus con-

under rule 60(b)(1) until the appellate court begins review of the case even if this is more than one year after the trial court judgment.

In order to be consistent with the interest in finality and prevention of the use of rule 60(b)(1) as a harmful substitute for appeal, the use of rule 60(b)(1) motions should be limited to the appealing party, including the appellant in cross-appeals.

61. FED. R. CIV. P. 60(b).

62. *See, e.g., Security Mut. Casualty Co. v. Century Casualty Co.*, 621 F.2d 1062 (10th Cir. 1980); *Lairsey v. Advance Abrasives Co.*, 542 F.2d 928 (5th Cir. 1976).

63. 11 C. WRIGHT & A. MILLER, *supra* note 43, §2866, at 228-29.

64. *See text at note 72 infra.*

65. "An appeal from the judgment of a federal district court is a matter of right." *Bray v. United States*, 370 F.2d 44, 46 (5th Cir. 1966).

66. According to the recommendation of this Note, the period between the judgment and the expiration of the appeal deadline is a time of alternative remedies for obvious errors of law. After judgment, a party has the option of using a rule 60(b)(1) motion or filing an appeal within the time allowed for notice of appeal, usually 30 days. *See note 56 supra.* Therefore, there is no "delay" until after the appeal period has expired and no appeal is filed. This rationale accords with the interests espoused by the courts seeking to limit the application of rule 60(b)(1), including the interest in finality, *see notes 68-73 infra* and accompanying text; conservation of resources, *see notes 87-88 infra* and accompanying text; continued viability of rule 59, *see notes 74-76 infra* and accompanying text; and prevention of the use of the rule as a substitute for timely appeal, *see note 86 infra* and accompanying text.

67. *See note 77 infra.*

68. *See 7 MOORE'S FEDERAL PRACTICE, supra note 7, ¶ 60.22[4]; cases cited at note 56 supra.*

69. Although the circuits are not in accord as to the procedure required, jurisdiction can

serving resources of both the appellate judicial system⁷⁰ and the litigating parties.⁷¹ Because the case is already on appeal, this conservation can be accomplished without any detriment to the perception of a “final” judgment and without any prejudice to the opposing party. As the Eleventh Circuit has observed: “During the pendency of an appeal, the parties recognize the possibility of reversal; thus, modification of a judgment being appealed impacts not at all on finality concerns.”⁷² The opposing party is not prejudiced, because the precise point addressed in the motion was in issue at trial and would obviously have been an issue — if not the only issue — on appeal.⁷³ Thus, a rule

usually be regained by the trial court after appeal has been taken and the trial court’s jurisdiction thereby divested. 7 MOORE’S FEDERAL PRACTICE, *supra* note 7, ¶ 60.30[2].

One view is that the district court has the power to deny the motion on the merits after notice of appeal without remand by the appellate court, because the district court’s action is in furtherance of the appeal. *See, e.g., Lairsey v. Advance Abrasives Co.*, 542 F.2d 928, 930, 932 (5th Cir. 1976) (“If [the district court is] inclined to grant the motion, it so indicates and the movant can then apply to the appellate court for remand for the trial court to enter its order.”); *Smith v. Pollin*, 194 F.2d 349, 350 (D.C. Cir. 1952).

The other view is that the motion in such cases must be made to the appellate court in the first instance and “the appellate court will grant [the motion] . . . only if there is a reasonable showing that if leave is given, the trial court might properly grant the 60(b) motion.” 7 MOORE’S FEDERAL PRACTICE, *supra* note 7, ¶ 60.30[2], at 60-339. *See, e.g., Smith v. Lujan*, 588 F.2d 1304 (9th Cir. 1979); *Lewis v. Penn Cent. Co.*, 459 F.2d 468 (3d Cir. 1972); *Baruch v. Beech Aircraft Co.*, 172 F.2d 445 (10th Cir. 1949).

Although Moore states that “[a]ny one of the procedures outlined above is workable,” 7 MOORE’S FEDERAL PRACTICE, *supra* note 7, ¶ 60.30[2], at 60-338, only the procedure outlined in *Lairsey* is in accord with the policies of division of judicial labor and the prevention of duplication of effort.

In addition, Moore notes that

If the appellate court remands the case to the trial court for consideration of the 60(b) motion, provision should be made in the remand order to the effect that if the trial court denies the motion for relief, the appeal may then be reinstated in the appellate court without any necessity to perfect a new appeal.

Id. at 60-337-38.

70. Judicial resources are saved by preventing duplicative efforts. *See* note 20 *supra* and accompanying text.

71. The parties save substantial time and money by avoiding the appeal. *See* note 17 *supra* and accompanying text.

72. *Parks v. United States Life & Credit Corp.*, 677 F.2d 838, 841 (11th Cir. 1982); *see also Lairsey v. Advance Abrasives Co.*, 542 F.2d 928, 931 (5th Cir. 1976) (concerns that 60(b) motions will upset the finality of judgments are minimized when the movant has also appealed the trial court’s decision).

Of course, there is an important interest in finality of litigation, but rule 60 itself addresses the issue by placing an outside limit of one year on these motions. Presumably it was the drafters’ belief that beyond one year the system’s need for finality would prevail, while within that period the interest in finality would be considered in conjunction with the practical abilities of litigants to become aware of possible grounds for 60(b)(1) relief. Also, the interest in finality has much less force where the litigation is still pending on appeal.

73. *See* note 23 *supra*. The Fifth Circuit has applied the interpretation recommended by this Note in *Lairsey v. Advance Abrasives Co.*, 542 F.2d 928 (5th Cir. 1976), a case involving a postjudgment change in controlling decisional law. In that case the movant filed a 60(b)(1) motion after the time for notice of appeal had run but while the appeal, which had been filed in a timely manner, was still pending. The court, in allowing the motion, emphasized the fact that rule 60(b)(1) “makes no mention of the period for noticing appeal or of whether notice of appeal has been filed” and held that the time allowable for appeal was not a per se limitation on filing the motion. 542 F.2d at 930.

60(b)(1) motion should be allowed after the time for appeal has run if an appeal has been filed, so long as the appellate court has not begun its review of the case.

An even more restrictive approach has been taken by the First and Seventh Circuits, which limit rule 60(b)(1) motions to the ten-day filing period specified in rule 59.⁷⁴ These courts take the position that any other interpretation undermines the effectiveness of rule 59.⁷⁵ This position assumes either that there can be no overlap between the two rules or that if there is such an overlap it must be subject to the limits of rule 59. While rule 59 *can* be used to correct judicial errors, it serves many independent functions. Rule 59 should not dictate the time limit for rule 60(b)(1) motions for the same reasons that it should not preclude applying rule 60(b)(1) motions to judicial errors.⁷⁶

Some courts have taken a broad view of the time limits for rule 60(b)(1) motions, suggesting that the only per se limit should be the one-year limit stated in the rule, with a determination of reasonableness made in each case.⁷⁷ The advantage of a rule having only the one-year limit would be its flexibility, which would promote justice in individual cases.⁷⁸ However, considerations of finality,⁷⁹ prevention of the use of rule 60(b)(1) as a substitute for appeal,⁸⁰ conservation of resources,⁸¹ and speedy disposition of disputes⁸² militate against such an approach.

The strong interest in finality of judgments requires a narrower interpretation than the "one-year" rule can offer. The prevailing party should be able to rely on a judgment obtained at a trial to which no timely appeal has been filed.⁸³ The limited number of occasions in which considerations of "reasonableness" might allow reopening an unappealed case after the time for appeal has lapsed do not justify

74. See notes 25-27 *supra*.

75. See note 28 *supra*.

76. See notes 29-33 *supra* and accompanying text.

77. See, e.g., *Security Mut. Casualty Co. v. Century Casualty Co.*, 621 F.2d 1062 (10th Cir. 1980). Although holding a motion 115 days after judgment untimely, the court in *Security Mutual* espoused a rule even more lenient than that recommended by this Note. The court examined the reasonableness of the 115-day delay even though the time for appeal had long since passed and no appeal had been filed. The court held that although no prejudice was shown to the opposing party by the delay, the motion would be denied because of the absence of any good reason on the part of the movant for the delay.

78. See Recent Development, *Civil Procedure — The Availability of Relief From a Final Judgment For Reason of Judicial Mistake of Law Under Rule 60(b)(1) of the Federal Rules of Civil Procedure — Security Mutual Casualty Co. v. Century Casualty Co.*, 621 F.2d 1062 (10th Cir. 1980), 16 TULSA L.J. 347, 350 (1980).

79. See notes 39-42 *supra* and accompanying text.

80. See notes 35 & 38 *supra* and accompanying text.

81. See note 15 *supra* and accompanying text.

82. See note 17 *supra* and accompanying text.

83. See note 66 *supra*.

keeping all cases in limbo for one year.⁸⁴ “The resulting instability would create chaos.”⁸⁵

The use of a rule 60(b)(1) motion in an unappealed case after the time for appeal has run constitutes an impermissible substitute for appeal and might in fact undermine the appellate process. Such a use would negate the strict and necessary time requirements for appeal, with little or no justifiable reason.⁸⁶ The interests in conservation of judicial and party resources also argue against such a rule.⁸⁷ When the trial court has made a decision, right or wrong, the party seeking relief is required to take some action within the time allowed for appeal, by filing either notice of appeal or a rule 60 motion. After the allowable time has expired, both the judicial system and the other parties are justified in relying on the finality of the judgment, and no further expenditure of time and effort by them should be required.⁸⁸

CONCLUSION

The recommended interpretation of rule 60(b)(1) — that such a motion be allowed to correct obvious judicial errors of law within the time allowed for appeal and, if an appeal has been filed, until the appellate court begins consideration of the case — adequately serves the competing policy considerations involved. The recommended interpretation comprises the essential elements of the strong interest in finality of judgments, the preservation of the use of rule 60(b)(1) as a substitute for the normal appellate process, and the interest in the continued viability of rule 59. In addition, limiting the timing and scope of a rule 60(b)(1) motion satisfies the economic requirements of proper division of labor that should lead to a more efficient functioning of the entire judicial system.

84. Stated another way, the dual requirements of reasonableness — lack of prejudice to the opposing party and good cause for the delay, *see* 11 C. WRIGHT & A. MILLER, *supra* note 43, § 2866, at 228-29 — will almost always be violated when the movant waits until the appeal period has expired before filing the motion and when no appeal is filed. Therefore, an independent hearing on the question of reasonableness will be a wasted effort — merely a routine act to create a record for review on appeal of denial of the motion. Even if the requirement of lack of prejudice to the opposing party is satisfied, the requirement of good cause for the delay will virtually never be satisfied. *See, e.g., Security Mut. Casualty Co. v. Century Casualty Co.*, 621 F.2d 1062 (10th Cir. 1980).

85. *Parks v. United States Life & Credit Corp.*, 677 F.2d 838, 841 (11th Cir. 1982).

86. *See* note 36 *supra* and accompanying text.

87. *See* notes 15-24 *supra* and accompanying text.

88. This argument differs slightly from the “finality” argument, notes 39-42 *supra* and accompanying text, in that it is based on estoppel principles. The estoppel argument focuses on the obligations of the moving party whereas the finality argument focuses on the notion that all controversies must eventually come to an end, with the cause of this termination being irrelevant.