

## APPELLATE TIP: APPROPRIATE TIMES TO USE RULE 54(B) AND (C) LANGUAGE

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This month's tip is another reminder about the appropriate times to use Rule 54(b) and (c) language. We already know the straightforward instances when Rule 54 (b) or (c) language should be used. When a motion or a stipulation fully resolves a case with prejudice, Rule 54(c) language needs to be present in the order to constitute a final judgment. When an order resolves only some of the claims, but leaves others still alive, Rule 54(b) language should be used, when appropriate, to start the clock on the time to file a notice of appeal on the resolved claims.

A more difficult case arises when an order—either through motion or stipulation—disposes of an entire case, but some of the claims were dismissed with prejudice and some were dismissed without prejudice. Under these circumstances, it might not be immediately apparent whether 54(b) or (c) language applies. Because a dismissal without prejudice is not a final, appealable order, *Grand v. Nacchio*, 214 Ariz. 9, 15, ¶ 12, 147 P.3d 763, 769 (App. 2006); A.R.S. § 12-2101(B) (permitting appeals only from final judgments), Rule 54(b) language should be used to start the appeal clock on those claims that were dismissed with prejudice.

Failure to use the correct Rule 54 language can cause a variety of problems down the road. In the *Grand* case, for example, the plaintiff lost a motion for partial summary judgment and wanted to appeal. 214 Ariz. at 14. Plaintiff tried to arrange for immediate appellate review of that ruling by inserting language similar to Rule 54(c) "finality" language and then voluntarily dismissing the remainder of its claims without prejudice, intending to refile those claims after appeal. *Id.* The court of appeals dismissed the appeal for lack of jurisdiction, stating that the proper method for disposing of the case in that circumstance was through a judgment including Rule 54(b) language. (The court did ultimately accept the case as a special action, but we cannot always count on the court doing this). The point is this: dismissals without prejudice do not present final judgments. If an order does not present a final judgment to all claims, Rule 54(b) language should be used when the resolved claims are separable from the unresolved claims such that no appellate court would have to decide the same issues more than once. In cases where the resolved claims are not separable, the appeal will have to wait until entry of a final judgment resolving all claims.