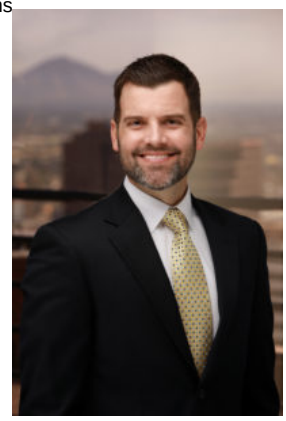
APPELLATE TIP: MAKE SURE THAT YOUR JUDGMENT OR ORDER IS FINAL AND APPEALABLE

August 29, 2016 | News, Publications



Written By: Eileen GilBride & Jonathan Barnes

No judgment is final and appealable in Arizona state courts unless it contains a certification, either under Rule 54(b) or Rule 54(c) of the Arizona Rules of Civil Procedure. This is important because the clock will not start ticking on the time for taking an appeal until the judgment is final. It is also important because if an appeal is taken from a non-final judgment, the court of appeals will either dismiss the appeal or stay it and remand back to the superior court for a new judgment that contains the required certification. So whether you are the prevailing party or the losing party, make sure the judgment is properly certified as final. Note that this rule change does not apply in federal courts — the judgment rules for federal courts remain the same.

But which certification applies and when?

Rule 54(b) applies when a judgment has been entered "as to one or more but fewer than all of the claims or parties." So if a party has been dismissed with a dispositive motion, or if one of the claims is knocked out, but other parties or claims remain alive in the action, Rule 54(b) language must be included in the judgment before it can be considered final.

Rule 54(c) applies in all other cases. This Rule provides that a "judgment shall not be final unless the court states that no further matters remain pending and that the judgment is entered pursuant to Rule 54(c)." So if the case is resolved as to all parties and all claims, whether by motion or by jury verdict, make sure the proposed form of judgment includes Rule 54(c) language. For a simple rule of thumb, remember that Rule 54(b) applies before all the claims or all the parties are resolved. Otherwise, use the language of Rule 54(c).

The court of appeals recently issued an order clarifying that Rule 54(c) finality language need not be included in post-judgment orders (for example, an order denying a new trial motion) where the underlying judgment contains the finality language. It was previously unclear whether such post-trial orders needed to include the finality language, because Rule 54(c) says "judgments" need the finality language to be appealable; and Rule 54(a) defines "judgment" to include "a decree and an order from which an appeal lies" (which could be interpreted to include a post-trial order). However, we now know that Rule 59 post-trial orders are appealable without finality language where the underlying judgment has such language in it. Note, however, that to be appealable, post-judgment orders must follow final judgments that include the Rule 54 language. *See Brumett v. MGA Home*, No. 1 CA-CV 15-0047, 2016 WL 4045308 (Ct. App. July 28, 2016). Post-judgment orders that follow non-final judgments must have the finality language to be appealable. *Id*.

Note: Generally a formal order need not be lodged if the court has issued an order in a signed minute entry. But a signed minute entry that lacks Rule 54(b) or (c) language does not count as an appealable judgment. So if the signed minute entry does not contain Rule 54(b) or (c) language, then be sure to lodge a formal order with the correct language to start the appeal clock. The clock will not have started to run from the minute entry.

Must state court consent judgments contain Rule 54(b) or 54(c) language of finality? Probably not.

Generally, if the parties stipulate a dismissal or a judgment, that judgment cannot be appealed (because they have stipulated to the judgment). For that reason, such a stipulated judgment would not need to include Rule 54(b) or (c) language. Having said that, however, the "no appeal" rule IS subject to limited exceptions. So – just to be safe – either include the Rule 54(b) or (c) language, or consult with a JSH appellate attorney to discuss the circumstances of your case before stipulating to a judgment.