

LAWRENCE V. LAWRENCE: THE USE OF RULE 60(b) MOTIONS BASED UPON POSTJUDGMENT CHANGES IN CONTROLLING LAW*

I. INTRODUCTION

Although most courts hold that a postjudgment change in controlling law fails to justify relief from final judgment under Federal Rule of Civil Procedure 60(b)(1),¹ the Alaska Supreme Court recently reaffirmed that a change in controlling law may warrant relief under Alaska Civil Rule 60(b)(1).² In *Lawrence v. Lawrence*,³ the Alaska

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* The author of this note clerked for Chief Justice Rabinowitz when *Lawrence* was before the Alaska Supreme Court. The author, however, did no substantive work on the opinion, and the ideas reflected in the note are his own.

1. *E.g.*, *Lubben v. Selective Serv. Sys. Local Board No. 27*, 453 F.2d 645, 650 (1st Cir. 1972); *Title v. United States*, 263 F.2d 28, 31 (9th Cir. 1959); *Collins v. City of Wichita*, 254 F.2d 837, 839 (10th Cir. 1958); *see also* 7 J. MOORE, *FEDERAL PRACTICE* ¶ 60.22[3], at 60-185 to 60-194 (2d ed. 1985).

Federal Rule of Civil Procedure 60(b) provides in part:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
 - (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
 - (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
 - (4) the judgment is void;
 - (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;
- or
- (6) any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) 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.

Fed. R. Civ. P. 60(b).

The Alaska rule concerning relief from final judgment is identical to the Federal Rule of Civil Procedure 60(b). *See* Alaska R. Civ. P. 60(b). This note will use "Rule 60(b)" to refer to Federal Rule of Civil Procedure 60(b). Alaska Rule of Civil Procedure 60(b) will be referred to as "Civil Rule 60(b)."

2. *Lawrence v. Lawrence*, 718 P.2d 142, 145-46 (Alaska 1986); *see also* *Pearson v. Bachner*, 503 P.2d 1401, 1402 (Alaska 1972) (a party seeking relief from judgment

Supreme Court held that a party seeking to halt the operation of a final judgment on the basis of a subsequent change in law may utilize a Civil Rule 60(b)(1) motion. The supreme court, however, affirmed the superior court's refusal to grant relief under Civil Rule 60(b)(1) because the motion was filed four months after the supreme court overruled the precedent for the original judgment.⁴ By a narrow interpretation of the language of the rule, the supreme court held that the party seeking relief must file the Civil Rule 60(b)(1) motion within the thirty-day period allowed for an appeal.⁵ Evidently, if the party complies with this time requirement the superior court may entertain the motion and consider the subsequent change in law as a factor upon which to base the grant of relief.⁶

This note does not disagree with the result in *Lawrence*. Nevertheless, this note argues against the strict application of the rule adopted in *Lawrence* that Civil Rule 60(b)(1) motions based on postjudgment changes in controlling law be filed during the appeal period. Civil Rule 60(b) makes no mention of the period for appeal. Instead, the rule establishes an outside limit of one year and prescribes a "reasonable time" standard. While a motion filed four months after

on the basis of a subsequent change in the law should make a motion under Civil Rule 60(b)).

3. 718 P.2d 142 (Alaska 1986).

4. *Id.* at 146. The Alaska Supreme Court, however, did state that relief from the prospective aspects of the judgment could be granted under Civil Rule 60(b)(5). See *infra* note 42 and accompanying text. Generally, decisions on motions under Civil Rule 60(b) are left to the trial court's discretion. *Aguchak v. Montgomery Ward Co.*, 520 P.2d 1352, 1354 (Alaska 1974). Accordingly, a reviewing court will reverse such decision only if it is left with a definite and firm conviction from the whole record that the trial judge erred. *Guard v. P & R Enter.*, 631 P.2d 1068, 1071 (Alaska 1981); *Gregor v. Hodges*, 612 P.2d 1008, 1010 (Alaska 1980). However, an appellate court owes no deference to a trial court's decision on a motion under Civil Rule 60(b)(4) because the validity of a judgment is strictly a question of law.

5. *Lawrence*, 718 P.2d at 145-46. Alaska Rule Appellate Procedure 204(a) provides that an appeal must be filed no later than 30 days after entry of final judgment. Similarly, most courts that have considered motions made under Rule 60(b)(1) have required that such motions be made within 30 days of final judgment. See, e.g., *Parks v. U.S. Life & Credit Corp.*, 677 F.2d 838 (11th Cir. 1982); *Oliver v. Monsanto Co.*, 56 F.R.D. 370, 372 (S.D. Tex. 1972), *aff'd sub nom. Oliver v. Home Indem. Co.*, 487 F.2d 514 (5th Cir. 1983); cf. *International Controls Corp. v. Vesco*, 556 F.2d 665, 670 (2d Cir. 1977) (relief from substantive judicial mistake under Rule 60(b)(1) may not be made after the time for appeal has elapsed), *cert. denied*, 434 U.S. 1014 (1978); *Schildhaus v. Moe*, 335 F.2d 529, 531 (2d Cir. 1964); *Tarkington v. United States Lines Co.*, 222 F.2d 358 (2d Cir. 1958). But see *Lairsey v. Advance Abrasives Co.*, 542 F.2d 928, 930 (5th Cir. 1976) (Rule 60(b) does not inflexibly require that a motion raising a postjudgment change in decisional law be filed before the time allowable for appeal has run.); *accord*, 11 C. WRIGHT & A. MILLER, *FEDERAL PRACTICE AND PROCEDURE*, § 2858, at 178-79 (1973).

6. Cf. *Pearson v. Bachner*, 503 P.2d 1401, 1402 (Alaska 1972).

the law has changed may be unreasonable, this note argues that a Civil Rule 60(b)(1) motion filed within thirty days of a postjudgment change in law, and no later than one year after the entry of judgment, is reasonable.⁷ Part II of this note sets forth the policy considerations underlying state and federal decisions not to entertain Rule 60(b)(1) motions filed after the expiration of the time for appeal. Part III discusses and criticizes the manner in which the Alaska Supreme Court has applied Civil Rule 60(b)(1). Part IV examines the applicability of Civil Rule 60(b)(5) or (6) to cases involving postjudgment changes in the law, and concludes that these clauses should not be relied upon. Finally, Part V proposes that Alaska courts extend relief under Civil Rule 60(b)(1) from postjudgment changes in the law to parties who file motions within thirty days of the announcement of the change and not more than one year after entry of final judgment.

II. APPLICATION OF RULE 60(b)(1): Artificial Boundaries

Most courts are willing to apply Rule 60(b)(1) to "mistakes" involving inadvertent judicial errors.⁸ Some courts have held that judicial error represents the only type of error that such a motion can correct.⁹ Others have also considered as "mistake" a "fundamental misconception of the law,"¹⁰ which encompasses the failure to follow controlling decisional law.¹¹ The Alaska Supreme Court,¹² along with a small minority of federal courts,¹³ has extended the definition of

7. For a discussion of what constitutes reasonable time, see *infra* notes 27-35 and accompanying text.

8. *E.g.*, *Barrier v. Beaver*, 712 F.2d 231, 234 (6th Cir. 1983); *Liberty Mut. Ins. v. EEOC*, 691 F.2d 438, 441 (9th Cir. 1982); *Fox v. Brewer*, 620 F.2d 177, 180 (8th Cir. 1980); *Meadows v. Cohen*, 409 F.2d 750, 752 (5th Cir. 1969); *Gila River Ranch, Inc. v. United States*, 368 F.2d 354, 357 (9th Cir. 1966); *Tarkington*, 222 F.2d 358, 360; see also 7 J. MOORE, *supra* note 1, ¶ 60.22[3], at 60-186 ("[W]hen the mistake may fairly be characterized as the product of inadvertance, it is correctable within a reasonable time."). But see *Elias v. Ford Motor Co.*, 734 F.2d 463, 467 (1st Cir. 1984); *Silk v. Sandoval*, 435 F.2d 1266, 1267-68 (1st Cir.), *cert. denied*, 402 U.S. 1012 (1971); Note, *Federal Rule 60(b): Finality of Civil Judgments v. Self-Correction by District Court of Judicial Error of Law*, 43 NOTRE DAME L. REV. 98 (1967).

9. *E.g.*, *Fox*, 620 F.2d at 180.

10. See, *e.g.*, *Ashford v. Steuart*, 657 F.2d 1053, 1055 (9th Cir. 1981); *Lairsey v. Advance Abrasives Co.*, 542 F.2d 928, 930 (5th Cir. 1976); *Meadows v. Cohen*, 409 F.2d 750, 752 (5th Cir. 1969).

11. *Lairsey*, 542 F.2d at 929; see also Note, *Relief from Final Judgment Under Rule 60(b)(1) Due to Judicial Errors of Law*, 83 MICH. L. REV. 1571 (1985) (arguing that the trial judge should be allowed to correct all obvious errors of law).

12. See *Lawrence v. Lawrence*, 718 P.2d 142 (Alaska 1986); *Pearson v. Bachner*, 503 P.2d 1401 (Alaska 1972).

13. *Parks v. U.S. Life & Credit Corp.*, 677 F.2d 838 (11th Cir. 1982); *Lairsey*, 542 F.2d 928; *Pierce v. Cook & Co.*, 518 F.2d 720 (10th Cir. 1975) (applying Rule 60(b)(6) where results differed in state and federal court actions based on same accident), *cert.*

"mistake" to include cases in which a change in the controlling law closely follows the lower court decision.¹⁴ This expansion in the coverage of the concept of "mistake" is reasonable because a trial court decision entered shortly before an appellate court changes the controlling law is thereby rendered mistaken. When an appellate court changes controlling law it acknowledges that the law has been incorrectly interpreted in the past. Moreover, the immediacy of the change in law relative to the challenged judgment creates a sense that at the time of the trial court decision the appellate court knew that the precedent relied upon by the trial court was erroneous.¹⁵

The most frequently stated rationale for allowing trial courts to correct their "mistakes" is that judicial efficiency is improved without creating a means to escape the effects of a failure to file a timely appeal.¹⁶ As Professor Moore asks:

denied, 423 U.S. 1079 (1976); *Tarkington v. United States Lines Co.*, 222 F.2d 318 (2d Cir. 1955) (by implication); *Oliver v. Monsanto Co.*, 56 F.R.D. 370 (S.D. Tex. 1972), *aff'd sub nom. Oliver v. Home Indem. Co.*, 487 F.2d 514 (5th Cir. 1973) (per curiam).

14. It is not entirely clear that the Alaska Supreme Court intended to give Civil Rule 60(b)(1) this broad reach. The rule announced in *Lawrence* and *Pearson* is perhaps "broader than the facts of the case[s] warrant." See 11 C. WRIGHT & A. MILLER, *supra* note 5, § 2858, at 176. In both *Lawrence* and *Pearson*, the supreme court affirmed the superior courts' dismissals of motions made under Civil Rule 60(b) on the ground that the movants did not file the motions within a "reasonable time," which was defined as the period within which an appeal could be brought. Since all six clauses of Civil Rule 60(b) permit the trial court to deny a 60(b) motion if it is not filed within a reasonable time, the court need not have specified which provision of Civil Rule 60(b), if any, it considered applicable to postjudgment changes in law.

Additionally, analysis reveals that the "well reasoned authority" relied upon by *Pearson* and, by implication, *Lawrence* is, in fact, not conclusive on the issue. The courts in neither *Tarkington v. United States Lines Co.*, 222 F.2d 358 (2d Cir. 1955), nor *Schildhaus v. Moe*, 335 F.2d 529 (2d Cir. 1964), expressly state that Rule 60(b)(1) is the specific clause that should control motions based upon postjudgment changes in the law.

The Alaska Supreme Court, nonetheless, has expressly stated that Civil Rule 60(b)(1) should govern motions for relief from judgment that are based on postjudgment changes in the law. This holding appears to be the correct one, not because any clear precedent mandates this result, but because common sense supports the notion that decisions made shortly before the controlling law changes are effectively ones which are mistaken.

15. The argument is even more compelling in the context of the Alaska court system. In the federal system, district court decisions are subject to review both by courts of appeals and by the United States Supreme Court. When two appellate courts disagree, which is "mistaken"? In Alaska, the supreme court is the court for appeals of superior court decisions from which there is no right of appeal to the court of appeals. ALASKA STAT. § 22.05.10(b) (1985). A decision rendered by the supreme court constitutes the final disposition for the state system and quickly removes doubt as to who is "mistaken" unless the court chooses to overrule itself — an event unlikely to occur within any given twelve-month period.

16. *E.g.*, *Oliver v. Home Indem. Co.*, 470 F.2d 329, 330-31 (5th Cir. 1972). In *Oliver*, the court stated:

Why should not the trial court have the power to correct its own judicial error under 60(b)(1) within a reasonable time — which . . . should not exceed the time of appeal — and thus avoid the inconvenience and expense of an appeal by the party which the court is now convinced should prevail?¹⁷

Where an appeal or a Rule 60(b)(1) motion could remedy an alleged error, correction by the trial court saves the parties the onus of financing costly appeals and removes from the appellate courts the burden of entertaining them.

In order to prevent Rule 60(b)(1) motions from substituting for appeals, nearly all courts restrict the time for filing such a motion to the time period allowed for an appeal.¹⁸ According to this reasoning, Rule 60(b)(1) was not intended to serve as a substitute for a direct appeal from an erroneous judgment. A reasonable time for making a motion on the basis of judicial error should, therefore, not exceed the time allowed for an appeal.

Courts uniformly adhere to the principle that litigants must file Rule 60(b)(1) motions within the period for appeal in cases concerning obvious errors of law, such as omitting interest on an award,¹⁹ as well as in those based upon changes in law announced after the expiration of the period for appeal.²⁰ When a case involves a postjudgment

The policy framing such a construction is, of course, one aimed at preventing the unnecessary wasting of energies of both appellate courts and litigants. It seems that absent the chance of serious injury to the rights of any party, the possible saving of judicial energies warrants the use of such discretionary reconsideration by the district court.

Id.; see also *Schildhaus v. Moe*, 335 F.2d 526, 531 (2d Cir. 1964) (“[T]here is indeed good sense in permitting the trial court to correct its own error. . . .”); *Oliver v. Monsanto*, 56 F.R.D. 370, 372 (S.D. Tex. 1972) (“The purpose behind allowing the trial court to correct its own errors is to prevent expensive appeals.”), *aff’d sub nom. Oliver v. Home Indem. Co.*, 487 F.2d 514 (5th Cir. 1973).

17. 7 J. MOORE, *supra* note 1, ¶ 60.22[3], at 60-185 to 60-186.

18. See *Lawrence v. Lawrence*, 718 P.2d 142, 145-46 (Alaska 1986); *Pearson v. Bachner*, 503 P.2d 1401, 1402 (Alaska 1972); *Alaska Truck Transp., Inc. v. Berman Packing Co.*, 469 P.2d 697, 700 (Alaska 1970); see also *Barrier v. Beaver*, 712 F.2d 231, 234 (6th Cir. 1983); *Fox v. Brewer*, 620 F.2d 177, 179 (8th Cir. 1980); *CRI, Inc. v. Watson*, 608 F.2d 1137, 1143 (8th Cir. 1979); *Compton v. Alton S.S. Co.*, 608 F.2d 96, 104 (4th Cir. 1979); *International Control Corp. v. Vesco*, 556 F.2d 665, 670 (2d Cir. 1977), *cert. denied*, 434 U.S. 1014 (1978); *Gila River Ranch v. United States*, 368 F.2d 354, 357 (9th Cir. 1966); cf. *Schildhaus v. Moe*, 335 F.2d 529, 531 (2d Cir. 1964); 11 C. WRIGHT & A. MILLER, *supra* note 5, § 2858, at 178. But see *Lairsey*, 542 F.2d 928. The Tenth and Eleventh Circuits would consider motions made after the period for appeal has expired if timely notice of appeal has been filed. See *infra* note 32.

19. *CRI, Inc.*, 608 F.2d at 1143; *Hoffman v. Celebrezze*, 405 F.2d 833, 837 (8th Cir. 1969). A leading commentary notes, however, that a truly minor oversight, something of the type that is hardly more than a clerical error, may be corrected at any time during the one-year limit contained in Rule 60(b). 11 C. WRIGHT & A. MILLER, *supra* note 5, § 2858, at 180.

20. See, e.g., *Lawrence*, 718 P.2d 142.

change in law that resulted from the appeal of a related case, and the petitioner failed to appeal, courts review Rule 60(b)(1) motions with heightened scrutiny. Absent "extraordinary circumstances" preventing appeal,²¹ an unsuccessful litigant is prohibited from relying on appeals by others and "shar[ing] in the fruits of victory" by using a Rule 60(b)(1) motion.²²

Concern over preventing the substitution of Rule 60(b)(1) motions for appeals does not, however, justify a requirement that the motion be filed during the time period allowed for an appeal when the controlling law changed after the expiration of that period.²³ A decision based upon unambiguous controlling law is effectively not appealable.²⁴ A party is unlikely to take on the expense of mounting an appeal, nor is his attorney likely to advise him to do so, if the law controlling the decision is clear and not in question.²⁵ Such an appeal would be futile and a waste of resources for both the judiciary and the parties concerned. The unsuccessful litigant has yet to find a reason to appeal. Under these circumstances, restriction of the filing of a motion for relief to the time period allowed for appeal is not reasonable.

21. See *Ackermann v. United States*, 340 U.S. 193 (1950); *Klapprott v. United States*, 335 U.S. 601, *modified*, 336 U.S. 942 (1949).

22. *Parks v. U.S. Life & Credit Corp.*, 677 F.2d 838, 840 (11th Cir. 1982).

23. Finality of judgments constitutes another purpose underlying the time constraint. According to the *Lawrence* court, "[t]he purpose of limiting 60(b)(1) motions to the 30 days allowed for appeals is the 'strong interest in the finality of litigation.'" *Lawrence*, 718 P.2d at 146 (quoting *Parks*, 677 F.2d at 841). The courts agree that, at some point, all litigation must become final. See, e.g., *Ackermann v. United States*, 340 U.S. 193, 198 (1950); *Pierce v. Cook & Co.*, 518 F.2d 720, 722 (10th Cir. 1975), *cert. denied*, 423 U.S. 1079 (1976). The doctrine of finality promotes social stability by enhancing faith in, and encouraging reliance upon, the judicial system. See, e.g., *Southern Pac. R.R. v. United States*, 168 U.S. 1, 49 (1897) ("[T]he aid of judicial tribunals would not be invoked for the vindication of rights . . . if . . . conclusiveness did not attend the judgments of such tribunals."). The doctrine also assures that identical legal standards will be applied in similar fact situations and enhances efficient judicial administration by reducing the need of the court to rely upon its own discretion. For a discussion of the goals of finality, see Note, *Federal Rule of Civil Procedure 60(b): Standards for Relief from Judgments Due to Changes in Law*, 43 U. CHI. L. REV. 646, 648-50 (1976). If judgments could be reopened due to changes of law, even within one year, the resulting degradation of both the doctrine of finality and the appellate process would produce "instability" bordering upon "chaos." *Parks*, 677 F.2d at 841.

24. And if the period for filing an appeal has expired, the decision is, of course, not appealable.

25. Conversely, the likelihood of a party risking an appeal, and hopefully winning a successful judgment, increases as the degree to which the controlling law is considered ambiguous increases.

The movant should be allowed a reasonable time *after* the change in controlling law within which to file his motion.²⁶

By its decision in *Lairsey v. Advance Abrasives Co.*,²⁷ the Fifth Circuit remains the only jurisdiction to acknowledge that it is unnecessary and undesirable to limit the time for filing a Rule 60(b)(1) motion to the time allowable for appeal.²⁸ The court in *Lairsey* noted that Rule 60(b) prescribes a reasonable time standard and makes no mention of the period for noticing an appeal,²⁹ which led the court to conclude:

Limiting the time for filing a 60(b) motion to the period allowed for noticing [an] appeal is an artificial choice based upon convenience An inflexible "time allowable for appeal" limitation would permit relief from minor errors of various kinds over longer periods of time than relief from fundamental matters, an incongruous result out of keeping with the equitable purpose of Rule 60. Also it would drain substantial vitality out of the concept that relief from post-judgment change in decisional law is an appropriate subject in 60(b) relief, because the only post-judgment changes giving rise to relief would be those taking place within a very short time after judgment.³⁰

The *Lairsey* court also noted that a motion made after controlling law changes is not a substitute for appeal:

There was no basis for appeal so long as [the controlling decisions] stood. 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 motions. Presumably it was the rule makers' belief that beyond that point the system's need for finality would prevail while within that period, through the "reasonable time" criterion, the interest of finality would be considered in conjunction with the practical abilities of litigants to become aware of possible grounds for 60(b) relief.³¹

Lairsey has not been followed by other circuits.³² The Fifth Circuit itself has circumscribed the reach of *Lairsey* when the Rule 60(b)

26. One commentator proposes that if an appeal is filed, a 60(b)(1) motion ought to be allowed until the appellate court actually begins review of the case. See Note, *supra* note 11, at 1579-83. Adoption of this proposal would encourage the filing of appeals merely to preserve the unsuccessful litigant's right to file a Civil Rule 60(b)(1) motion for relief if the law were to change in the future.

27. 542 F.2d 928 (5th Cir. 1976).

28. See also *Chavez v. Balesh*, 704 F.2d 774 (5th Cir. 1983) (affirming the district court's grant of a Rule 60(b)(1) motion made after expiration of the time period for noticing an appeal). Note that a notice of appeal was timely filed in *Lairsey*; however, no appeal was filed in *Chavez*.

29. *Lairsey*, 542 F.2d at 930.

30. *Id.* at 930-31.

31. *Id.* at 931.

32. The Second and Ninth Circuits have held that a Rule 60(b)(1) motion cannot be used to correct a mistake of a substantive legal nature after the time for appeal has

motion is filed during the pendency of an appeal.³³ Nevertheless, the reasoning of *Lairsey* rings true. Instead of adopting a rigid time requirement applicable to all Rule 60(b)(1) motions, courts must recognize that what constitutes reasonable time depends upon the facts of each case.³⁴ What may be a reasonable time restriction for the filing of motions based on appealable judicial error may not be reasonable for motions based upon changes in law occurring after the expiration of the period for appeal. Professors Wright and Miller, finding case-by-case adjudication appropriate, have identified a useful two-prong test for reasonableness: "The courts consider whether the party opposing the motion has been prejudiced by the delay in seeking relief and they consider whether the moving party had some good reason for his failure to take appropriate action sooner."³⁵

III. *LAWRENCE V. LAWRENCE*: THE APPLICATION OF CIVIL RULE 60(b)(1)

Lawrence involved a divorce decree that required Donald Lawrence to pay the actual costs of his daughter's full-time college education until she reached twenty-two years of age or left college.³⁶ When the court entered the decree, Alaska law permitted the award of post-majority educational support under *Hinchey v. Hinchey*.³⁷ Three

lapsed. See *International Controls Corp. v. Vesco*, 556 F.2d 665, 670 (2d Cir. 1977), *cert. denied*, 434 U.S. 1014 (1978); *Gila River Ranch, Inc. v. United States*, 368 F.2d 354, 357 (9th Cir. 1966). The First Circuit has held that errors of law can never be corrected with a Rule 60(b)(1) motion. See *Elias v. Ford Motor Co.*, 734 F.2d 463, 467 (1st Cir. 1984). The Eleventh and Tenth Circuits permit trial courts to grant 60(b) motions after the time for appeal has expired when there has been a postjudgment change in law and a timely appeal from the original judgment has been filed. See *Morris v. Adams-Mills Corp.*, 758 F.2d 1352, 1358 (10th Cir. 1985); *Parks v. U.S. Life & Credit Corp.*, 677 F.2d 838, 840 (11th Cir. 1982).

33. See *Willie v. Continental Oil Co.*, 746 F.2d 1041, 1046 (5th Cir. 1984). In *Willie*, the court held that a district court may deny a 60(b) motion filed after a notice of appeal because the action is in furtherance of an appeal. If the district court is inclined to grant the 60(b) motion, however, it must obtain the leave of the court of appeals. See also *Venon v. Sweet*, 758 F.2d 117, 123 (3d Cir. 1985) (accord).

34. *In re Cresidas' Estate*, 14 F.R.D. 15, 18 (D.C. Alaska 1953).

35. 11 C. WRIGHT & A. MILLER, *supra* note 5, § 2866, at 228-29 (footnotes omitted).

36. *Lawrence v. Lawrence*, 718 P.2d 142, 144 (Alaska 1986). The support payments equalled \$600 per month; the educational payments were capped at \$7,200 per year. *Id.*

37. *Hinchey v. Hinchey*, 625 P.2d 297 (Alaska 1981), *overruled in part*, *Dowling v. Dowling*, 679 P.2d 480 (Alaska 1984).

months later, the supreme court expressly overruled *Hinchey* in *Dowling v. Dowling*,³⁸ and held that the applicable Alaska statute only authorized support for minor children.³⁹

Seven months after the entry of the divorce decree, and four months after the *Dowling* decision, Lawrence filed a Civil Rule 60(b) motion seeking to suspend those portions of the divorce decree that ordered postmajority support.⁴⁰ The superior court refused to grant relief under either Civil Rule 60(b)(1) or (5).⁴¹ On appeal, the supreme court ruled that relief from the prospective features of the judgment, that is the future postmajority educational support payments, could be granted under Civil Rule 60(b)(5),⁴² and remanded the case to the superior court. The supreme court agreed with the lower court holding that Civil Rule 60(b)(1) was unavailable as a basis for relief because the time for appeal had expired when Lawrence filed the motion.⁴³

In *Lawrence*, only Justices Moore and Burke indicated a willingness to distinguish between untimely Civil Rule 60(b)(1) motions filed as substitutes for appeal and those filed late because no justification for an appeal existed during the appeal period. Concurring with the result but dissenting from the Civil Rule 60(b)(1) analysis, Justice Burke observed that until the announcement of the overruling decision:

a motion to amend the judgment, made upon the ground that the trial court had no authority to order payment of post-majority educational support, was sure to fail. Under *Hinchey*, which the trial court was bound to follow, the court would have no choice but to deny the motion. Under these circumstances, I see no legitimate reason to fault Lawrence's failure to bring his motion within the time allowed for notice of appeal. Any such motion would have been a useless act.⁴⁴

The majority refused to recognize the distinction identified by Justices Moore and Burke and relied upon the reasoning in *Parks v. U.S. Life & Credit Corp.*⁴⁵

Parks involved the use of certain terms in a loan disclosure statement issued by U.S. Life & Credit that allegedly confused and misled

38. *Dowling*, 679 P.2d 480. The *Dowling* decision was announced on March 30, 1984; the superior court granted the divorce decree in *Lawrence* on December 21, 1983.

39. *Dowling*, 679 P.2d at 483 (interpreting ALASKA STAT. § 25.24.160 (1984)).

40. *Lawrence*, 718 P.2d at 144.

41. *Id.* at 146.

42. *Id.*

43. *Id.* at 145-46.

44. *Id.* at 147 (Burke, J., dissenting).

45. *Id.* at 146 (citing *Parks v. U.S. Life & Credit Corp.*, 677 F.2d 838 (11th Cir. 1982) (per curiam)).

the borrower in violation of the Truth-in-Lending Act⁴⁶ and related regulations.⁴⁷ The magistrate found that no violation had occurred.⁴⁸ Noting that no Supreme Court or court of appeals case in the same circuit directly governed, the district judge disagreed with the magistrate and entered judgment for the Parks.⁴⁹ U.S. Life decided that it would not appeal the case.⁵⁰

Approximately eighteen months after the district court order in *Parks*, the Fifth Circuit ruled in an unrelated case that terms identical to those in *Parks* were not confusing or misleading.⁵¹ U.S. Life filed a motion for relief from judgment under Rule 60(b)(1) and (6) three months after that ruling.⁵² The district court denied U.S. Life's motion. The district court reasoned that although a change in controlling law may warrant relief under Rule 60(b), no controlling law existed at the time of the judgment.⁵³

The Fifth Circuit affirmed the district court,⁵⁴ but provided additional reasoning. The appellate court viewed as correct the district court's finding that no controlling case law existed at the time of the original judgment,⁵⁵ and implied that Rule 60(b)(1) encompasses changes in controlling law.⁵⁶ Nevertheless, the appellate court emphasized the fact that U.S. Life failed to file an appeal.⁵⁷ With the view that the Rule 60(b)(1) motion was an attempted substitute for an appeal after others had sought a ruling, the appellate court stated that "[a]n unsuccessful litigant may not rely on appeals by others and share in the fruits of victory by way of a 60(b) motion. . . . '[d]eliberate choices [not to appeal] are not to be relieved from.'"⁵⁸

46. Pub. L. No. 90-321, 82 Stat. 146 (codified as amended in scattered sections of 15 U.S.C.).

47. 677 F.2d at 839.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* (citing *Blalock v. Aetna Fin. Co.*, 511 F. Supp. 33 (N.D. Ga. 1980), *aff'd*, 641 F.2d 878 (5th Cir. 1981)).

52. *Id.*

53. *Id.*

54. *Id.* at 841.

55. *Id.* at 839.

56. *Id.* at 839-40.

57. *Id.* at 840. The court stressed that the defendant *chose* not to appeal. *Id.*

58. *Id.* at 840-41 (quoting *Ackermann v. United States*, 340 U.S. 193 (1950) (citations omitted)). In *Ackermann*, the appellant chose not to file an appeal during the period for filing appeals although an appeal was brought in a closely related case. Indeed, the parties were relatives. But, as the court held, the appellant who failed to file a timely notice of appeal could not "rely on others and share in the fruits of victory." This language does not apply to the procedural circumstances in *Lawrence*.

Lawrence is distinguishable from *Parks* in two ways. First, the original decision in *Parks* was based upon ambiguous law.⁵⁹ The pertinent provisions of the divorce decree in *Lawrence* were based upon authoritative and clear precedent.⁶⁰ Second, in *Parks*, U.S. Life made a conscious decision of litigation strategy in its decision not to appeal. In *Lawrence*, filing an appeal was never a viable option.⁶¹ These two distinctions suggest that the party who forgoes an appeal in the face of unclear precedent should not be relieved of the harsh results of his decision. On the other hand, courts should not penalize a party for failing to appeal from a judgment clearly supported by law.

Donald Lawrence did not seek to use a Civil Rule 60(b)(1) motion as a substitute for appeal, nor did he rely on the appeals of others. Unfortunately, Lawrence failed to file his motion within a reasonable time. As Part V of this note discusses, an unjustifiable delay of four months after a change in law to file a Civil Rule 60(b)(1) motion is unreasonable.⁶² Courts are justified in refusing to entertain such an untimely motion. Therefore, this note concurs with the result in *Lawrence*.

There are two reasons the *Lawrence* decision is important to litigants who file Civil Rule 60(b)(1) motions. First, *Lawrence* supports the proposition that the language of Civil Rule 60(b)(1) governs motions based on a change in the controlling law. Second, a litigant who waits a substantial amount of time before filing a Civil Rule 60(b)(1) motion will be denied relief. Arguably, the harsh result in *Lawrence* need not occur in all cases in which the Rule 60(b)(1) motion is filed after the expiration of the period for appeal. *Lawrence* is distinctive because it involved a motion filed four months after the change in law. The Alaska Supreme Court has yet to address a motion filed without delay after a postjudgment change in law. Furthermore, while the supreme court makes clear that Civil Rule 60(b)(1) motions are to be filed within the thirty-day period allowed for appeals, the cases cited by the court as precedent do not involve judicial "mistake" due to a change in the law.⁶³ What appears distinctively possible is that a future decision will distinguish *Parks*, limit *Lawrence* to its facts, and

59. See *supra* note 53 and accompanying text. The Third Circuit appears to allow correction of an erroneous decision in face of ambiguous precedent. See *Sleek v. J.C. Penny Co.*, 292 F.2d 256 (3d Cir. 1961).

60. See *supra* note 37 and accompanying text.

61. See *supra* notes 24-26 and accompanying text. For a discussion of the use of a Rule 60(b)(6) motion in a "no choice" situation, see *infra* note 95.

62. See *infra* notes 97-105 and accompanying text.

63. See *supra* note 14.

reach a different result. In light of the above, the denial of a promptly filed Civil Rule 60(b)(1) motion would be worthy of appeal.⁶⁴

IV. THE FUTURE APPLICABILITY OF RULE 60(b)

If the Alaska Supreme Court were to reconsider the *Lawrence* decision, due consideration likely would be given to the applicability of clauses (5) and (6) of Civil Rule 60(b) to motions based upon post-judgment changes in law. Rather than overrule the well-established principle that litigants must file Civil Rule 60(b)(1) motions within the period of appeal,⁶⁵ application of an alternative clause might seem to offer the court an easier solution.⁶⁶ As a matter of law, however, neither clause (5) nor (6) can provide uniform relief in cases of subsequent changes in the law. Furthermore, as a matter of policy, the expanded application of these clauses could create more problems than it would resolve.

Motions made under clauses (1)-(3) of Rule 60(b) are restricted by a "reasonable time" limit, not to exceed one year.⁶⁷ Motions under clauses (4)-(6) are subject only to a "reasonable time" requirement.⁶⁸ A Civil Rule 60(b)(5) or (6) motion, therefore, can be considered at any time, even years after the final judgment.⁶⁹ Without an outer time limit, the allowance of 60(b)(5) or (6) motions solely based upon change in the controlling law would undermine the finality of judgments. To avoid making the enforceability of final judgments dependent upon the stability of the law,⁷⁰ courts have narrowly interpreted and strictly applied Rule 60(b)(5) and (6).

64. For the argument that a motion is timely if filed within 30 days of the change in law, see *infra* notes 97-105 and accompanying text.

65. See *supra* note 18 and accompanying text.

66. Clauses (2), (3), and (4) are inapplicable on their face and therefore not viable alternatives.

67. Civil Rule 60(b).

68. *Id.*

69. See, e.g., *Klapprott v. United States*, 335 U.S. 601, *modified*, 336 U.S. 942 (1949) (finding four years reasonable); *Tsakonites v. Transpacific Carriers Corp.*, 322 F. Supp. 722 (S.D. N.Y. 1970) (finding five years reasonable); *Pierre v. Bernuth, Lembcke Co.*, 20 F.R.D. 116 (S.D. N.Y. 1956) (finding three years reasonable); *In re Cremidas' Estate*, 14 F.R.D. 15 (D. Alaska 1953) (finding three years reasonable). But see *Ashford v. Steuart*, 657 F.2d 1053 (9th Cir. 1981) (finding 30 days unreasonable where movant offered no explanation for his failure to timely challenge ruling in question by direct appeal or 60(b) motion); *Delzona Corp. v. Sacks*, 265 F.2d 157 (3d Cir. 1959) (finding one and one-half years unreasonable); *Morgan v. Southern Farm Bureau Casualty Ins. Corp.*, 42 F.R.D. 25 (W.D. La. 1967) (finding 23 months *per se* unreasonable).

70. See *Parks v. U.S. Life & Credit Corp.*, 677 F.2d 838, 841 (11th Cir. 1982) (*per curiam*).

A. Rule 60(b)(5): Relief from the Prospective Aspects of Final Judgments

Following the lead of several federal courts,⁷¹ the Alaska Supreme Court in *Lawrence* held that "relief under Civil Rule 60(b)(5) may be granted from [the] prospective features [of a judgment] when subsequent events make it no longer equitable that the judgment have prospective application."⁷² Courts have traditionally limited relief from the prospective application of a judgment to injunctions.⁷³ Today, however, courts have little difficulty in extending the coverage of Rule 60(b)(5) to any final judgments having prospective application.⁷⁴ On an adequate showing, courts will provide relief if it is no longer equitable that the judgment be enforced, whether because of subsequent legislation,⁷⁵ a change in the operative facts,⁷⁶ or a change in the controlling decisional law.⁷⁷ By its own terms, relief under the "prospective application" clause of Rule 60(b)(5) is limited to judgments with prospective effect.⁷⁸ Consequently, Rule 60(b)(5) fails to provide a rule that can be applied uniformly to all judgments affected by post-decisional changes in law.

Another ground for relief under Civil Rule 60(b)(5), that a prior judgment upon which the present judgment is based has been revised or otherwise vacated, appears more promising as a means to provide a general rule applicable to all cases of postjudgment decisional changes.⁷⁹ In practice, however, courts have infrequently applied and narrowly interpreted this ground. Courts require the moving party to prove that the judgment was "directly related, by parties and claims,"

71. *Jordan v. School Dist. of Erie*, 548 F.2d 117 (3d Cir. 1977); *Theriault v. Smith*, 523 F.2d 601 (1st Cir. 1975). The United States Supreme Court has affirmed the granting of relief from a continuing judgment due to change in law. *See Systems Fed'n No. 91 v. Wright*, 364 U.S. 642, 647 (1961); *United States v. Swift & Co.*, 286 U.S. 106 (1932).

72. *Lawrence v. Lawrence*, 718 P.2d 142, 146 (Alaska 1986).

73. 7 J. MOORE, *supra* note 1, ¶ 60.26[4], at 60-251 to 60-261.

74. *See, e.g., United States v. Edell*, 15 F.R.D. 382 (S.D. N.Y. 1954); *accord* 7 J. MOORE, *supra* note 1, ¶ 60.26[4], at 60-262; 11 C. WRIGHT & A. MILLER, *supra* note 5, § 2863, at 205; *see also* *Bros, Inc. v. W.E. Grace Mfg. Co.*, 320 F.2d 594 (5th Cir. 1963) (judgment yet to be paid).

75. *See, e.g., Systems Fed'n No. 91*, 364 U.S. 642.

76. *See, e.g., Tobin v. Alma Mills*, 192 F.2d 133 (4th Cir. 1951), *cert. denied*, 343 U.S. 933 (1952).

77. *See, e.g., Elgin Nat'l Watch Co. v. Barrett*, 213 F.2d 776 (5th Cir. 1954); *Coca-Cola Co. v. Standard Bottling Co.*, 138 F.2d 788 (10th Cir. 1943).

78. *See, e.g., Bros, Inc. v. W.E. Grace Mfg. Co.*, 320 F.2d 594, 610 (5th Cir. 1963) ("[W]e are dealing with the prospective application of the judgment, not the unscrambling of the past.").

79. The third ground for relief under Civil Rule 60(b)(5), that the "judgment has been satisfied, released, or discharged," is inapplicable on its face.

to the subsequently reversed prior decision.⁸⁰ It is not sufficient that the prior decision provided only precedent for the challenged judgment.⁸¹

B. Rule 60(b)(6): Relief in "Extraordinary Circumstances"

Like Civil Rule 60(b)(5), the scope of Civil Rule 60(b)(6) precludes the clause from uniform application in cases involving post-judgment changes in law. Relief under Rule 60(b)(6) cannot be granted on a ground covered by any of the first five clauses of Rule 60(b). In *Klapprott v. United States*,⁸² the first United States Supreme Court case to construe Rule 60(b)(6), Justice Black stated that "the language of the 'other reason' clause, for all reasons *except* the five particularly specified, vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice."⁸³ Though not always a conscientious adherent to the mutual exclusivity principle articulated in *Klapprott*,⁸⁴ the Alaska Supreme Court recently acknowledged that relief under clause (6) is unavailable unless the other clauses are inapplicable.⁸⁵ Having held that Civil Rule 60(b)(1) governs motions based upon changes in controlling law,⁸⁶ the supreme court is bound by the mutual exclusivity principle to refuse consideration of such motions under Civil Rule 60(b)(6).⁸⁷

80. See, e.g., *Michigan Sur. Co. v. Service Mach. Corp.*, 277 F.2d 531 (5th Cir. 1960); see also Note, *supra* note 23, at 653.

81. *Lubben v. Selective Serv. Local Bd. No. 27*, 453 F.2d 645, 650 (1st Cir. 1972); see *Title v. United States*, 263 F.2d 28 (9th Cir.), *cert. denied*, 359 U.S. 989 (1959); *Berryhill v. United States*, 199 F.2d 217, 219 (6th Cir. 1952); *Loucke v. United States*, 21 F.R.D. 305 (S.D. N.Y. 1957); 7 J. MOORE, *supra* note 1, ¶ 60.26[4], at 60-248; 11 C. WRIGHT & A. MILLER, *supra* note 5, § 2863, at 203-04. For the argument that Rule 60(b)(5) has been narrowly applied without reason and that relief due to a judicial change in the law should be governed by Rule 60(b)(5), see Note, *supra* note 23, at 663-66.

82. 335 U.S. 601, *modified*, 336 U.S. 942 (1949).

83. *Id.* at 614-15 (emphasis added).

84. See, e.g., *Patrick v. Sedwick*, 413 P.2d 169 (Alaska 1966) (relief under Civil Rule 60(b)(2) or 60(b)(6)). But see *Farell v. Dome Laboratories*, 650 P.2d 380 (Alaska 1982) (appellant failed to present evidence that case involved something more than one of the goals stated in first five clauses of the rule).

85. *Stone v. Stone*, 647 P.2d 582 (Alaska 1982); *O'Link v. O'Link*, 632 P.2d 225 (Alaska 1981).

86. *Lawrence v. Lawrence*, 718 P.2d 142 (Alaska 1986).

87. See *Stone*, 647 P.2d at 586 (relief available under Civil Rule 60(b)(6) is exclusive of other remedies available under Civil Rule 60(b)(1)-(5)).

Courts have further restricted Civil Rule 60(b)(6) motions by holding that only "extraordinary circumstances" warrant relief.⁸⁸ In *Livingston v. Livingston*,⁸⁹ for example, the Alaska Supreme Court relied upon Civil Rule 60(b)(6) to affirm a superior court judgment vacating the custody provisions of a divorce decree. The superior court had opened and vacated the default judgment upon discovery that the child's mother and her counsel failed to inform the court, at the time of the divorce proceedings, that the child was not physically present in Alaska.⁹⁰ The supreme court found that clause (6) applied under the unusual circumstances of that case.⁹¹

The Alaska Supreme Court is unlikely to find that a postjudgment change in law, by itself, constitutes a sufficiently unusual or extraordinary circumstance to invoke clause (6). With one rather extraordinary exception,⁹² abundant authority exists for refusing relief

88. *Ackermann v. United States*, 340 U.S. 193, 197-202 (1950); *Goland v. CIA*, 607 F.2d 339, 373 (D.C. Cir. 1978), *cert. denied*, 445 U.S. 927 (1980); *O'Link*, 632 P.2d at 229-30.

The United States Supreme Court has not directly addressed the applicability of Rule 60(b)(6) to a request for relief from judgment based on a change in the law. There are three cases in which the rule has been applied. See *Polites v. United States*, 364 U.S. 426 (1960); *Ackermann*, 340 U.S. 193; *Klapprott v. United States*, 335 U.S. 601, *modified*, 336 U.S. 942 (1949). The decisions in *Klapprott* and *Ackerman* establish that relief from final judgment under Rule 60(b)(6) requires a showing of "extraordinary circumstances."

In *Klapprott*, a denaturalization default judgment was entered against the petitioner while he was both seriously ill and wrongfully imprisoned. Because of these unusual circumstances, the Court affirmed the granting of relief on a motion filed four years after the judgment based upon a change in law.

In *Ackermann*, the Court did not find the requisite extraordinary circumstances sufficient to warrant relief under Rule 60(b)(6) based upon a change in law when petitioner made a free, calculated, and deliberate choice not to appeal.

Polites, which affirmed denial of a Rule 60(b) motion based upon a change in law because the controlling law had not in fact changed, is notable because it left open the question whether "when an appeal has been abandoned or not taken because of a clearly applicable adverse rule of law, relief under Rule 60(b) is inflexibly to be withheld when there has been a clear and authoritative change in governing law." *Polites*, 364 U.S. at 433.

89. *Livingston*, 572 P.2d 79.

90. *Id.* at 81.

91. *Id.* at 85-86. The supreme court first described the facts of *Livingston* as "unusual" in *O'Link*, 632 P.2d at 230.

92. *Pierce v. Cook & Co.*, 518 F.2d 720 (10th Cir. 1975), *cert. denied*, 423 U.S. 1079 (1976) (granting relief under Rule 60(b)(6) where in two suits stemming from same accident, plaintiffs who removed to federal court lost summary judgment motion due to state precedent, while plaintiff who remained in state court system prevailed upon appeal to the state's highest court which overruled the precedent). For criticism of *Pierce*, see Note, *Pierce v. Cook & Co.: Change in State Law as a Ground for Relief from a Federal Judgment*, 124 U. PA. L. REV. 843 (1976).

for postjudgment changes in law under Rule 60(b)(6).⁹³ Although the supreme court advocates the liberal construction of Civil Rule 60(b)(6) in order to permit lower courts to vacate judgments in the interest of justice,⁹⁴ case law demonstrates the need to show additional facts to justify a finding of extraordinary circumstances.⁹⁵

Neither Alaska Civil Rule 60(b)(5) nor (6) can govern adequately motions based upon postjudgment changes in law. Unrestricted by the one-year time limitation of clauses (1)-(3), motions may be made under clauses (5)-(6) within any "reasonable time." The uncertainty that surrounds the "reasonable time" concept, and the degree to which a judge may invoke his discretion, would undermine finality more than it would correct injustice. Courts have limited relief under Rule 60(b)(5) to prospective judgments and to decisions in which a related proceeding was subsequently overruled. If Civil Rule 60(b)(6) applies, the movant must show extraordinary circumstances in addition to the change in decisional law. Even then, the concept of mutual exclusivity would probably prohibit the consideration of a Civil Rule 60(b)(6) motion in Alaska because Alaska courts have declared that Civil Rule 60(b)(1) governs motions based upon changes in law.⁹⁶ Consequently, Civil Rule 60(b)(1) should continue to control these motions.

V. A PROPOSAL FOR THE GRANTING OF 60(b)(1) MOTIONS FILED WITHIN THIRTY DAYS AFTER A CHANGE IN LAW

In Alaska, motions based on a subsequent change in the law are governed by Civil Rule 60(b)(1) and must be made within the thirty

93. See, e.g., *Lubben v. Selective Serv. Sys. Local Bd. No. 27*, 453 F.2d 645 (1st Cir. 1972); *Title v. United States*, 263 F.2d 28, 31 (9th Cir.), cert. denied, 359 U.S. 789 (1959); *Berryhill v. United States*, 199 F.2d 217, 219 (6th Cir. 1952).

94. *O'Link v. O'Link*, 632 P.2d 225, 230 (Alaska 1981); *Alaska Truck Transp. v. Berman Packing Co.*, 469 P.2d 697, 699 (Alaska 1970).

95. The Supreme Court decisions in *Polites v. United States*, 364 U.S. 426 (1960), *Ackermann v. United States*, 340 U.S. 193 (1950), and *Klapprott v. United States*, 335 U.S. 601, modified, 336 U.S. 942 (1949), together suggest that in circumstances that leave the movant with no choice but not to appeal the judgment, Rule 60(b) relief may be available. As observed *supra* note 88, the *Polites* decision suggests that failure to appeal in the face of clear and authoritative precedent might be a "no choice" situation. *Polites* makes no recommendation as to which clauses of Rule 60(b) would be applicable in this case. Rule 60(b)(6) seems inappropriate for the only extraordinary circumstance present is the postjudgment change in law. See *supra* text accompanying notes 92-95. For reasons discussed in the text accompanying notes 8-14, *supra*, Civil Rule 60(b)(1) should be the governing rule in Alaska.

96. See *supra* note 2 and accompanying text.

days allowed for an appeal.⁹⁷ This time restriction is artificially imposed and not specifically prescribed by the rule.⁹⁸ The primary reasons for limiting to thirty days the time to file a motion — ensuring the finality of judgment⁹⁹ and preventing the use of 60(b) motions as substitutes for appeals¹⁰⁰ — are sensible in the context of appealable errors, but senseless in the event of postjudgment changes in the law occurring after the appeal period has run.

A Civil Rule 60(b)(1) motion made soon after the change in law passes the two-prong test for reasonableness articulated by Professors Wright and Miller.¹⁰¹ The movant has good reasons for *not* taking appropriate action sooner — until the change in controlling law is announced, no realistic basis for a 60(b) motion exists.¹⁰² Moreover, a delay in seeking relief generally will not prejudice the nonmovant. Any harm caused to the nonmovant is more likely due to the fact that the original judgment would be set aside than it is due to delay.¹⁰³ In light of the fact that a Rule 60(b)(1) motion filed within one year from judgment and immediately after a change in law will generally pass the Wright and Miller test for reasonableness regardless of whether the period for appeal has expired, Alaska should decide such motions on a case-by-case basis.

Lawrence's delay in filing the Civil Rule 60(b) motion failed the two-prong test for reasonableness. There is no indication that Lawrence offered *any* reason for his failure to file the motion sooner. Finding a failure to pass one prong of the test, the court need not consider whether the nonmovant has been prejudiced by the delay. Application of the reasonableness test to *Lawrence* supports the superior court's denial of the Civil Rule 60(b) motion.

Greater uniformity may be achieved by equating a reasonable time after a change in law with a fixed period. An obvious choice for the fixed number of days is thirty, the time allowed for filing an appeal. Apparently, thirty days offers sufficient time to prepare the appropriate motions. Unlike an appeal, which presupposes that a party has available all information necessary for making an informed decision, a change in law may not become immediately evident. A five-to-ten day grace period to allow for the dissemination of information, therefore,

97. See *supra* notes 14-18 and accompanying text.

98. Civil Rule 60(b) provides only that "[t]he motion shall be made within a reasonable time, and . . . not more than one year after the judgment."

99. See *supra* note 23.

100. See *supra* notes 18-22 and accompanying text.

101. See *supra* note 35 and accompanying text.

102. See *Lairsey v. Advance Abrasives Co.*, 542 F.2d 928, 932 (5th Cir. 1976); *Lawrence v. Lawrence*, 718 P.2d 142, 147 (Alaska 1986) (Burke, J., dissenting).

103. E.g., *Smith v. Widman Trucking & Excavating*, 627 F.2d 792, 798 (7th Cir. 1980).

should be added to the thirty-day period.¹⁰⁴ Nevertheless, a thirty-day limit would ensure that the parties closely monitor the law to safeguard their rights during the one-year motion period.¹⁰⁵

VI. CONCLUSION

The Alaska courts should not inflexibly apply the "period of appeal" time requirement to Civil Rule 60(b)(1) motions based on postjudgment changes in law. Finding that such motions are timely will not encourage their use as a substitute for appeal. Prior to the change in law the movant never really has the option to appeal.¹⁰⁶ Granting these motions would correct judicial mistakes and serve the interests of justice without significantly sacrificing finality.

Gary Edward Mason

104. The enormous size of the Alaska court system's jurisdiction and less than adequate communication supports an argument for an extended motion period.

105. If an attorney failed to file a motion within the postchange time period and the client learned of the mistake, could the client file a Civil Rule 60(b) motion based upon the attorney's mistake? The answer must be "no," for the mistake arose from the motion and not from the initial judgment. The client's remedy is a legal malpractice suit.

106. *See supra* notes 24-26 and accompanying text.