

Fla.R.Civ.P. Rule 1.540

Rule 1.540. Relief from Judgment, Decrees, or Orders

Currentness

(a) Clerical Mistakes. Clerical mistakes in judgments, decrees, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal such mistakes may be so corrected before the record on appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, 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 or rehearing;

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) that the judgment, decree, or order is void; or

(5) that the judgment, decree, or order has been satisfied, released, or discharged, or a prior judgment, decree, or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment, decree, or order should have prospective application.

The motion shall be filed within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, decree, order, or proceeding was entered or taken. A motion under this subdivision does not affect the finality of a judgment, decree, or order or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, decree, order, or proceeding or to set aside a judgment, decree, or order for fraud upon the court.

Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished, and the procedure for obtaining any relief from a judgment or decree shall be by motion as prescribed in these rules or by an independent action.

Credits

Amended July 16, 1992, effective Jan. 1, 1993 ([604 So.2d 1110](#)); July 7, 1995, effective Jan. 1, 1996 ([663 So.2d 1047](#)); Nov. 22, 1995, effective Jan. 1, 1996 ([663 So.2d 1049](#)); Oct. 23, 2003, effective Jan. 1, 2004 ([858 So.2d 1013](#)); Dec. 5, 2019, effective Jan. 1, 2020 ([2019 WL 6601627](#)).

Editors' Notes

COMMITTEE NOTES

1992 Amendment. Subdivision (b) is amended to remove the 1-year limitation for a motion under this rule based on fraudulent financial affidavits in marital cases.

2003 Amendment. Subdivision (b) is amended to clarify that motions must be filed.

AUTHORS' COMMENT--1967

Rule 1.540 is substantially the same as Federal Rule 60, but includes decrees as the object of the relief sought, unlike the Federal Rule. It is identical to former Rule 1.38, 1954 Rules of Civil Procedure, as amended, effective in 1962.

This rule applies to orders, decrees and proceedings as well as to judgments, “decrees” apparently being included because those rendered prior to January 1, 1967, may come within this rule.

Subsection (a) relating to clerical mistakes includes only errors or mistakes arising from accidental slip or omission and not errors or mistakes in the substance of what is decided by the judgment or order. Such may be called to court's attention by motion practiced by any party. Correcting or completing the record-on-appeal is provided for in Florida Appellate Rule 3.6l.

Subsection (b) provides for motion practice to relieve a party upon such terms as are just from a final judgment, decree, order, or proceeding on five specified grounds, whereas the comparable Federal Rule provides for an additional reason whenever it justifies relief from operation of the judgment.

The application of the relief provisions is generally within the discretion of the court except when questions of law are involved. For example, if a judgment or decree is void as a matter of law, no discretion would exist but to give proper relief.

The rule requires that the motion for relief be made within a reasonable time, with a one (1) year limitation being applicable to the first three grounds of mistake, et al., newly discovered evidence which could not be discovered by due diligence in time to move for a new trial or rehearing, and fraud or other misconduct of an adverse party.

Since the motion is not in the appellate court, it does not stay proceedings under Florida Appellate Rule 3.9f and will not toll the appeal time. If the motion is granted, the time to appeal will run from the new judgment rendered. Certain former corrective writs for relief are abolished by the rule with relief from a judgment or decree being only by motion as prescribed by the Rules or by an independent action.

When a judgment becomes a judgment of the appellate court, it is necessary to first obtain leave of the appellate court before the lower court has jurisdiction to relieve a party from a judgment. Filing of an appeal, however, does not toll the one year limitation in which a motion to vacate a judgment must be filed.

Subsection (b) is applicable to obtain relief from an unjust prior decree or judgment and has been liberally construed to provide such remedy. While a denial of the motion is appealable as a final judgment or decree, such appeal will not bring up for review the final decree or judgment sought to be vacated; if the motion is granted, the order is interlocutory, which is appealable as such, unless the court's action on granting of motion meets the test of finality, in which event it is appealable as a final judgment. See [Odum v. Morningstar, 158 So.2d 776 \(Fla.D.C.A.2d 1963\)](#).

The power of the court is discretionary and a party has no absolute right to invoke it. It is incumbent upon the moving party to show the existence of adequate grounds to justify the exercise of such power.

Although the rule speaks of abolishing writs of coram nobis and coram vobis, such motions are still available in criminal procedure.

Moreover, as in the Federal Rule, Rule 1.540(b) does not extend to interlocutory judgments.

Finally, it should be carefully noted that there is an express saving clause in Rule 1.540(b) which does not limit the power of the court to set aside a judgment or decree for fraud upon the court. There is no time limit on the exercise of this power, nor on the right to bring an independent action under this rule.

[Notes of Decisions \(2368\)](#)

West's F.S.A. RCP Rule 1.540, FL ST RCP Rule 1.540

Florida Supreme Court Rules of Civil Procedure, Judicial Administration, Criminal Procedure, Civil Procedure for Involuntary Commitment of Sexually Violent Predators, Worker's Compensation, Probate, Traffic Court, Small Claims, Juvenile Procedure, Appellate Procedure, Certified and Court-Appointed Mediators, Court Appointed Arbitrators, Family Law, Certification and Regulation of Court Reporters, Certification of Spoken Language Interpreters, and Qualified and Court-Appointing Parenting Coordinators are current with amendments received through 2/15/20. All other State Court Rules are current with amendments received through 6/15/20.