

A stockbroker was convicted in federal court of criminal fraud in the sale of certain securities. A former client then sued the stockbroker in a federal civil action, alleging fraud in the sale of the same securities for which the stockbroker had been criminally convicted. The client's attorney moved to preclude the stockbroker from relitigating the liability issues that were common to the criminal and civil actions. The court granted the motion and, after a bench trial on damages, entered judgment against the stockbroker for \$100,000.

On appeal from the stockbroker's criminal conviction, the appellate court reversed and vacated the conviction. The stockbroker promptly moved for relief from the final judgment in the civil action. The motion was filed 15 months after entry of the final judgment in the civil action.

Should the court grant the motion?

- A. No, because it is untimely.
- B. No, because the stockbroker did not appeal the civil judgment.
- C. Yes, because the court in the civil action should not have based the civil judgment on the criminal judgment before it had been reviewed on appeal.
- D. Yes, because the criminal judgment on which the civil judgment was based has been reversed and vacated.

## Explanation:

### Relief from final judgment

(FRCP 60(b))

#### Grounds for relief

- Mistake, inadvertence, surprise, excusable neglect
- Newly discovered evidence
- Fraud, misrepresentation, misconduct
- Void judgment (eg, lack of jurisdiction)
- Judgment:
  - satisfied, released, discharged
  - based on reversed or vacated judgment *or*
  - will violate equity if applied prospectively
- Other reason justifying relief (rare)

#### Time to file

Within one year

Within reasonable time

**FRCP** = Federal Rule of Civil Procedure.

Federal Rule of Civil Procedure (FRCP) 60(b) allows a party to **move for extraordinary relief** from a court's final judgment on **limited grounds**. The motion must be made within one year from the court's judgment if the motion is based on any of the grounds listed in FRCP 60(b)(1)–(3) (see image above). All other FRCP 60(b) motions can be made **within a reasonable time** under the circumstances. This includes a motion under FRCP 60(b)(5), which authorizes relief from a judgment that:

- has been satisfied, released, or discharged
- is **based on an earlier judgment** that has been **reversed or vacated** *or*
- will violate equity if applied prospectively.

Here, the federal court granted the client's motion in the civil fraud action to prevent the stockbroker from relitigating the liability issues that had been decided in the stockbroker's criminal fraud action. An appellate court then reversed and vacated the criminal fraud conviction, and the stockbroker promptly moved for relief in the federal civil action pursuant to FRCP 60(b)(5). As a result, the one-year deadline does not apply, and the court should grant the stockbroker's timely motion for relief **(Choice A)**.

**(Choice B)** A party need not appeal before moving to set aside a judgment under FRCP 60(b). Had the stockbroker appealed the civil judgment, the appeal likely would have been unsuccessful since the court properly applied **issue preclusion** to prevent the relitigation of identical issues decided in the criminal action.

**(Choice C)** A final judgment entered in a civil or criminal action is entitled to *immediate* preclusive effect. This means that the court in the civil action validly based the civil judgment on the criminal judgment before it had been reviewed on appeal.

**Educational objective:**

Under FRCP 60(b)(5), a party may file a motion within a reasonable time to obtain relief from a judgment that (1) has been satisfied, released, or discharged, (2) is based on an earlier judgment that has been reversed or vacated, or (3) will violate equity if applied prospectively.

**References**

- Fed. R. Civ. P. 60(b)–(c) (relief from judgment).
- 11 Charles Alan Wright et al., Federal Practice and Procedure § 2863 (3d ed. 2020) (explaining that a party may move for relief from a judgment that is based on an earlier judgment that has been reversed or vacated).

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