

1-1-2002

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Recommended Citation

7 Suffolk J. Trial & App. Advoc. 127 (2002)

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INTERPRETING RULE 60(B)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE¹: LIMITATIONS ON RELIEF FROM JUDGMENTS FOR “ANY OTHER REASON”

I. INTRODUCTION

Rule 60 of the Federal Rules of Civil Procedure attempts to strike a balance between the competing interests of finality of judgments and practical justice.² This Note explores how the rule has been construed by the United States Supreme Court and the First Circuit. Specifically, this Note examines the Rule’s “any other reason” clause.³ This Note attempts to define the limits on the reservation of equitable discretion in the

¹ FED. R. CIV. P. 60(b)(6).

² FED. R. CIV. P. 60(b). Rule 60(b) provides:
Relief from Judgment or Order

(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, 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 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 effect the finality of a judgment 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, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., Sec 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audit 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 shall be by motion as prescribed in these rules or by an independent action. *Id.*

³ See *id.* Rule 60(b)(6) provides in pertinent part: “(6) any other reason justifying relief from operation of the judgment” *Id.*

reviewing court, and to discern definitive standards that courts use when deciding whether or not to exercise their discretionary power under the clause.⁴ Part I traces the history of the clause from its amendment in 1948, through its interpretation in several Supreme Court cases.⁵ Part II examines how the First Circuit interprets the “extraordinary circumstances,” “reasonable time limit,” and “any other reason” clauses of the Rule.⁶ Part III compares the First Circuit’s interpretation of the Rule with the established Supreme Court standards and concludes with a list of the standards and a discussion of the limitations on the court’s reservation of equitable powers.

II. HISTORY

Rule 60 was amended in 1948 to include Rule 60(b)(6).⁷ Congress enacted the amendment to abolish the federal courts use of common law writs that had previously been grounds for relief from final judgments.⁸ The legislative intent was to codify specific grounds for relief from judgments, while reserving some equitable power in the court to do “practical justice.”⁹ Afterward, Rule 60(b)(6) was referred to as a “savings” or “catch-all” clause.¹⁰

Immediately following the drafting of Rule 60 (b)(6), legal scholars expressed concern over the “grand reservoir of equitable power” the clause afforded to the reviewing courts.¹¹ Since the amendment, the Supreme Court has developed several standards in its use of 60(b)(6), helping to further define limits on the loosely-drafted clause.¹² In two cases involving denaturalization proceedings with similar factual situations, *Klapprott v. United States*¹³ and *Ackermann v. United States*,¹⁴ the Court made several distinctions about when a Rule 60(b)(6) motion is applicable.¹⁵

⁴ See *id.*

⁵ See *infra* notes 8-28.

⁶ See *infra* notes 33-79.

⁷ See U.S.C.S. FED. R. CIV. P. 60 (b) (2000) (explaining history of amendments).

⁸ See *id.*

⁹ See *id.*

¹⁰ See Note, *Federal Rule 60(b): Relief from Civil Judgments*, 61 YALE L.J. 77,81 (1952)(explaining how 60(b)(6) provided way for courts to circumvent time limitations in 60(b) (1-5)).

¹¹ See JAMES WM. MOORE ET AL., MOORES’S FEDERAL PRACTICE § 60.27 (2000). See generally Note 61 Yale L.J. 77,81 (1952); Scott A. Weathers, *The “Savings” Clause of Trial Rule 60(B): Muddy Waters?*, 21 IND L.J. 73, 75 (1988)(discussing Indiana state court’s court use of discretion led to inconsistent precedent); Comment, *Temporal Aspects of the Finality of Judgments-The Significance of Federal Rule 60(b)*, 17 U of Chi. L. Rev 664, 672-673 (analyzing Supreme Court’s broad use of discretion in *Klapprott* decision).

¹² See FED. R. CIV. P. 60(b)(6). The Rule states in pertinent part: “(6) any other reason justifying relief from operation of the judgment.” *Id.*

¹³ 69 S. Ct. 384 (1949).

In *Klapprott*, a naturalized citizen was deprived of his citizenship through a default proceeding.¹⁶ A divided court vacated the default judgment, holding that the facts in the case constituted extraordinary circumstances, which brought the motion within the “any other reason” clause of Rule 60(b)(6).¹⁷

When confronted with a similar situation in *Ackermann*, the Court came to a different conclusion.¹⁸ The petitioner, a naturalized citizen, lost his citizenship through a default proceeding.¹⁹ In *Ackermann*, the petitioner did not seek an appeal within the statute of limitations period, as was suggested to him by an Immigration and Naturalization Services (“INS”) agent.²⁰ Based upon these facts, the Supreme Court held that the default judgment could not be vacated because there was no showing of “extraordinary circumstances,” and therefore, the judgment fell outside the realm of *Klapprott*.²¹

In cases following the *Ackermann* decision, the Court set out more restrictions on the use of a 60(b)(6) motion for relief from judgment.²² In *Liljeberg v. Health Serv. Acquisition Corp.*,²³ the Court vacated a lower court decision holding in which the judge refused to disqualify himself in

¹⁴ 71 S. Ct 209 (1950).

¹⁵ See *Klapprott v. United States*, 69 S. Ct. 384, 390 (vacating default judgment upon finding of extraordinary circumstances justifying relief under 60 (b)(6)); *Ackermann*, 71 S. Ct. 209, 213 (denying 60(b)(6) motion to vacate judgment based on lack of showing of extraordinary circumstances).

¹⁶ *Klapprott*, 69 S. Ct. at 390.

¹⁷ *Id.* at 389-390. Justice Black’s majority opinion classifies the petitioner’s situation as one of extraordinary circumstances. *Id.* Petitioner moved after the one-year time limitation for the other grounds of Rule 60. *Id.* The Court explained that he was no more able to defend himself than he would have been had he never received notice of the charges because he was ill, imprisoned, and destitute. *Id.* Therefore, his inability to defend himself against the denaturalization proceeding is not mere neglect, but an extraordinary situation in which the use of the Rule is warranted. *Id.*

¹⁸ See *Ackermann*, 71 S. Ct. at 209 (denying motion to vacate judgment because no extraordinary circumstances).

¹⁹ *Id.* at 210. The petitioner lost his citizenship and did not appeal the order because he had no money or property other than a home worth \$2,500. *Id.*

²⁰ *Id.* The petitioners were in the custody of INS agent W.F. Kelly, in whom they had great confidence. *Id.* Kelly advised the petitioners not to put up their home to pay for an appeal, and they followed his advice rather than the advice of their lawyer. *Id.*

²¹ *Id.* at 213. The Court distinguished the petitioner in *Klapprott* from the petitioner in *Ackermann* for several reasons: “no choice and choice; imprisonment and freedom of action; no trial and trial; no counsel and counsel; no chance for negligence and inexcusable negligence.” *Id.*

²² See *Liljeberg v. Health Serv. Acquisition Corp.*, 486 U.S. 847, 868 (1988) (holding 60(b)(6) mutually exclusive from other 60(b) provisions); *Pioneer Inv. Serv. Co. v. Brunswick Assoc. Ltd. P’ship et al.*, 507 U.S. 380, 393 (1993) (suggesting relief under 60(b)(6) granted upon showing of faultlessness of moving party).

²³ 486 U.S. 847 (1988).

violation of 28 U.S.C.A. 455(a).²⁴ In deciding if vacatur was the appropriate remedy, the Court considered three factors: the risks of injustice to the parties, whether the denial of relief will produce injustice in other cases, and whether the public's confidence in the judicial process would be undermined.²⁵ The Court also explained that the six provisions in Rule 60(b) are mutually exclusive and that 60(b)(6) cannot be used to avoid the Rule's one year time limitation.²⁶

In *Pioneer Inv. Serv. Co. v. Brunswick Assoc.*,²⁷ the Court construed a bankruptcy rule's neglect provision, and commented on the type of extraordinary circumstances that would justify relief under Rule 60(b)(6).²⁸ According to the Court, in order to get the benefits of Rule 60(b)(6), a party must be faultless in the delay of not moving under another applicable provision of the rule.²⁹

In *Link v. Wabash*,³⁰ the Supreme Court suggested relief under 60(b)(6) might be available in a case of attorney misconduct.³¹ *Link* involved an attorney who missed a pre-trial conference.³² The district court judge dismissed the action because of the lawyer's failure to appear.³³ The court of appeals affirmed and the Supreme Court upheld the lower court's exercise of its discretionary power pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.³⁴ The Court reasoned that the lack of notice given to the client was of less consequence because of the availability of a corrective remedy under Rule 60(b).³⁵ Although the Court did not analyze the case under Rule 60(b), the decision suggested a client wronged by an attorney may have a remedy under the rule.³⁶

III. FIRST CIRCUIT APPLICATION OF RULE 60 (B)(6)

An examination of Rule 60 (b)(6) motions in the First Circuit reveals several different factual instances where the courts have exercised

²⁴ *Liljeberg*, 486 U.S. at 868.

²⁵ *Id.* at 864.

²⁶ *Id.* at 864.

²⁷ 507 U.S. 380 (1993).

²⁸ *Pioneer Inv. Serv. Co. v. Brunswick Assoc. Ltd. P'ship et al.*, 507 U.S. 380, 394. *Id.* at 394.

²⁹ *See id.* (explaining excusable neglect in 60(b)(1) mutually exclusive from grounds for 60(b)(6) relief).

³⁰ 370 U.S. 626 (1962).

³¹ *See id.* at 632. (noting petitioner never used "escape hatch" of Rule 60(b)).

³² *Id.* at 628.

³³ *Id.* at 629.

³⁴ *Id.* at 630-632.

³⁵ *Id.* at 632. Although the petitioner in this case did not avail himself of the "escape hatch" 60(b) remedy, the Court suggested his circumstances might be appropriate for relief under the rule. *Id.*

³⁶ *See id.*

their discretion and granted equitable relief.³⁷ The main criteria used to evaluate motions made pursuant to 60(b)(6) are set out clearly by the First Circuit Court of Appeals.³⁸ These general criteria are: the timeliness of the request, the existence of exceptional circumstances justifying extraordinary relief, the absence of unfair prejudice to the opposing party, and reason to believe that vacating the judgment will not be an empty exercise.³⁹

A. Grounds for Denial of Relief

The two most frequently cited reasons for denying 60(b)(6) motions are the timeliness and extraordinary circumstances elements of the four part criteria.⁴⁰ The First Circuit also adheres to the requirement that Rule 60(b)(6) cannot be used to substitute for an appeal, or to avoid the strict one year time limits of the rule.⁴¹ The Circuit has denied motions under

³⁷ See *Rivera et al v. Puerto Rico Tel. Co.*, 921 F.2d 393, 395 (1st Cir. 1990) (justifying district court use of 60(b)(6) discretion to clarify conflicting court orders); *United States v. Baus*, 834 F.2d 1114, 1124 (1st Cir. 1987) (reversing district court after finding 60(b)(6) extraordinary circumstances consisting of material breach of settlement agreement); *Marderosian v. Town of Spencer*, 170 F.R.D. 335, 342 (D. Mass 1997) (granting relief upon finding of conflict of interest and no actual prejudice to opposing side); *United States v. Belanger*, 598 F.Supp 598, 601 (D. Me. 1984) (granting relief from judgment where court reversed rule after judgment and prior to appeal expiration); *Castro et.al. v. Beecher*, 522 F. Supp 873, 876 (D. Mass 1981) (modifying consent decree through invocation of inherent equitable powers under 60(b)(6)); *King v. Mordowanec*, 46 F.R.D. 474, 479 (D.R.I. 1969) (granting relief from dismissal where plaintiff unaware of attorney's gross neglect).

³⁸ See *Teamsters et.al. v. Superline Trans. Co.*, 953 F.2d 17, 19-20 (1st Cir. 1992) (outlining three criteria and adding fourth "empty exercise" element).

³⁹ *Id.* at 20.

⁴⁰ See *Ahmed v. Rosenblatt*, 118 F.3d 886, 891 (1st Cir. 1997) (denying relief upon no showing of exceptional circumstances); *Cotto v. United States*, 993 F.2d 274, 280 (1st Cir. 1993) (noting reliance on government official does not present extraordinary circumstance especially with no timely appeal); *Ojeda-Toro v. Rivera-Mendez et al*, 853 F.2d 25, 30-31 (1st Cir. 1988) (holding decision not to appeal bars relief under 60(b)(6) within inadequate legal representation claim); *Scola v. Boat Frances*, 618 F.2d 147, 154-155 (1st Cir. 1980) (holding clerk's miscomputation of prejudgment interest not exceptional circumstance within ambit of clause); *Martins v. Charles Hayden Goodwill Inn Sch.*, 178 F.R.D. 4, 7 (D. Mass 1997) (denying relief where same factual claim brought under 60(b)(6) time-barred within 60(b)(3)); *United States v. 59.88 Acres of Land*, 734 F.Supp. 555, 559 (D. Mass 1990) (holding six- year delay in moving for relief not reasonable time within 60(b)(6)); *Cutler v. Lewiston Daily Sun*, 103 F.R.D. 172, 174 (D. Me 1984) (vacating on alternate grounds while noting plaintiff's lack of compliance with local rule not extraordinary circumstance); *Brown v. Clark Equip. Co.*, 96 F.R.D. 166, 173 (D. Me. 1982) (denying relief because of failure to appeal, mere change in decisional law not exceptional circumstance).

⁴¹ See *Gonzalez*, 918 F.2d at 306 (denying 60(b)(3) relief due to late filing and no extraordinary circumstances under 60(b)(6)); *Martins*, 178 F.R.D. at 7 (denying appeal brought one year and a half after final decision); *Ahmed*, 118 F.3d at 891 (upholding denial

the “empty exercise” element.⁴² Further, the Appeals Court upheld a district court’s denial of a rule 60(b)(6) motion where the district court did not issue an opinion.⁴³ These decisions demonstrate a petitioner must offer additional 60(b)(6) reasons for relief besides a need for more time, merely adding a 60(b)(6) motion to another Rule 60 ground will not be sufficient.⁴⁴

B. Changes of Law

There are several conflicting decisions dealing with changes in law.⁴⁵ Two cases in the district court of Maine are illustrative of the subtle distinctions that lead to relief or denial.⁴⁶

In *Brown v. Clark Equip. Co.*⁴⁷, the Maine district court denied a 60(b)(6) motion.⁴⁸ While acknowledging that the Supreme Court had not directly determined Rule 60(b)(6) relief in a change of law situation, the court relied on a tenth circuit decision in denying the relief.⁴⁹ The plaintiffs in *Brown* requested relief from judgment because Maine abolished its privity requirement eight months after they lost summary judgment due to lack of privity.⁵⁰ The court relied on the plaintiff’s choice to proceed in federal forum as grounds for denying the availability of relief in state court.⁵¹ If the plaintiff had been forced to proceed in federal court, the

of pro se 60(b)(6) motion due to no meritorious claim or extraordinary circumstances); *Lepore v. Vidockler et al*, 792 F.2d at 275 (1st Cir. 1986) (denying relief where no additional reasons other than 60(b)(3) offered).

⁴² See *Teamsters et al*, 953 F.2d at 20 (explaining litigant must provide supporting documentation with motion, more than mere conclusory allegation); *Cotto*, 993 F.2d at 280 (finding no suitable showing of meritorious claim or defense).

⁴³ See *Lepore*, 792 F.2d at 272 (denying motion dealing with newly discovered evidence under 60(b)(2) and 60(b)(6)).

⁴⁴ See *supra* notes 38-42.

⁴⁵ See *Lubben v. Selective Service*, 453 F.2d at 652 (1st Cir. 1972)(denying motion to vacate based on new precedent because no appeal of initial decision); *Scola*, 618 F.2d at 155 (holding no 60(b)(6) relief where clerk misapplied law because relief available under 60(b)(1)); *Brown*, 96 F.R.D. at 175 (holding change in decisional law not extraordinary circumstance); *Elias v. Ford Motor Co.*, 734 F.2d at 468 (1st Cir. 1984)(holding conflicting court orders amounted to exceptional circumstance justifying relief); *Belanger*, 598 F.Supp at 606 (D. Me. 1984)(granting relief because of timely appeal and court’s change of law during pendency of appeal).

⁴⁶ See *Brown*, 96 F.R.D. at 166 (holding change in decisional law does not justify 60(b)(6) relief); *Belanger*, 598 F.Supp at 606 (granting relief because of timely appeal and court’s change of law during pendency of appeal).

⁴⁷ 96 F.R.D. 166 (D. Me. 1982).

⁴⁸ *Id.* at 172.

⁴⁹ *Id.* at 167-68.

⁵⁰ *Id.* at 167.

⁵¹ *Id.* at 172.

request may have been more compelling.⁵² The court also pointed to the plaintiff's failure to appeal as further support for its holding.⁵³

Two years later, the same court came to a different result when analyzing a similar issue.⁵⁴ In *United States v. Belanger*⁵⁵, the defendant moved for relief from judgment under 60(b)(1) and 60(b)(6).⁵⁶ The court granted the plaintiff summary judgment in an action to foreclose a mortgage on defendant's property.⁵⁷ The defendant did not respond to the motion and accordingly the court granted it pursuant to Maine local rule 19(c).⁵⁸

While the appeal was pending, the Maine local rule was rendered inoperative by another decision.⁵⁹ The court granted the defendant's 60(b)(6) motion based on two facts: the (1) change of law and (2) the defendant's timely motion for relief before the time for appeal had run out.⁶⁰ Although a mere change in law is ordinarily not proper ground for relief under 60(b)(6), in this case, the court granted relief.⁶¹

The First Circuit has denied motions for relief based on a change of law where the plaintiff did not appeal, and the "subsequent decisions did not render the continued application of the injunction inequitable."⁶² The First Circuit has also denied relief where the defendant moved to correct a clerical error under 60(b)(1), which was the clerk's erroneous addition of prejudgment interest.⁶³ The district court initially granted the motion to correct the judgment under 60(b)(1).⁶⁴ The plaintiff appealed, and the court reversed the amended judgment.⁶⁵ On appeal, the court denied the motion because it found the mistake was an error of law, and the defendant had not filed his motions within applicable time limits.⁶⁶

⁵² *Id.*

⁵³ See *Brown*, 96 F.R.D. at 170.

⁵⁴ See *United States v. Belanger*, 598 F.Supp. 598 (D. Me. 1984) (granting relief after change in law revised by court and appealed on time).

⁵⁵ 598 F. Supp. 598 (D. Me. 1984).

⁵⁶ *Id.* at 600.

⁵⁷ *Id.*

⁵⁸ *Id.* at 600. Local Rule 19(c) provides that a party "shall be deemed to have waived objection to a motion unless he files a written objection within ten days after the filing of the motion. *Id.*

⁵⁹ *Id.* at 600.

⁶⁰ *Belanger*, 598 F. Supp at 601.

⁶¹ *Id.*

⁶² See *Lubben v. Selective Service*, 453 F.2d 645, 650 (1st Cir. 1972) (refusing to modify injunction under 60(b)).

⁶³ See *Scola v. Boat Frances*, 618 F.2d 147, 152-153 (1st. Cir. 1980)(denying 60(b)(6) relief where no appeal filed under 60(b)(1)).

⁶⁴ *Id.* at 150.

⁶⁵ *Id.* at 155.

⁶⁶ *Id.* at 153.

C. Attorney Misconduct

Attorney misconduct or negligence is another factual situation where judicial decisions conflict.⁶⁷ In a 1969 case, the court granted 60(b)(6) relief where an attorney's failure to prosecute a client's case resulted in its dismissal and the client was unaware of the gross neglect.⁶⁸

A similar factual situation existed in *Brooks v. Walker*.⁶⁹ In *Brooks*, a client moved for 60(b)(6) relief when his attorney's failure to properly prepare for trial resulted in an acceptance of a settlement.⁷⁰ The Massachusetts district court denied relief, and noted that a settlement of \$160,000 on the facts of the case was not reason enough to be considered within the scope of 60(b)(6).⁷¹ The court suggested that a denial of any relief would present a far more compelling case under 60(b)(6).⁷²

Two other 60(b)(6) motions alleging attorney misconduct were denied on "freedom of choice" grounds.⁷³ In *Chang*,⁷⁴ the plaintiff filed a racial discrimination complaint with one attorney and then switched to another attorney.⁷⁵ The second attorney experienced personal problems during the pendency of Chang's claim, including suspension of his license and an indictment for distribution of cocaine.⁷⁶ The attorney failed to inform Chang that the case was lost until nearly a year later.⁷⁷ On these facts, the Appeals Court upheld the lower court's denial of 60(b)(6) relief, noting that had the attorney filed a claim, the court would have had no jurisdiction and that Chang was aware of his attorney's decision to seek the dismissal.⁷⁸

⁶⁷ See e.g., *King v. Mordowanec*, 46 F.R.D. 474, 480 (D. R.I. 1969) (granting relief when client unaware of counsel's gross neglect); *Brooks v. Walker*, 82 F.R.D. 95, 98 (denying relief where plaintiff consulted other lawyers, received money, and caused prejudice to other party) (D. Mass. 1979); *Ojeda-Toro v. Rivera-Mendez et al.*, 853 F.2d 25, 31 (1st Cir. 1988) (affirming lower court's denial of relief where plaintiff participated in neglect and exercised choice); *Marderosian v. Town of Spencer*, 170 F.R.D. 335, 341 (D. Mass. 1997) (granting relief due to actual conflict of interest between plaintiff and attorney and jury prejudiced); *Chang v. Smith*, 778 F.2d 83, 85 (1st Cir. 1985) (denying relief where harm resulted from strategic choice to take voluntary dismissal).

⁶⁸ See *King*, 46 F.R.D. at 480.

⁶⁹ See 82 F.R.D. 95, 96-97.

⁷⁰ See *id.* at 96.

⁷¹ *Id.*

⁷² See *id.* at 98.

⁷³ See *Chang v. Smith*, 778 F.2d 83 (1st Cir. 1985); *Ojeda-Toro v. Rivera-Mendez et al.*, 853 F.2d 25 (1st Cir. 1988).

⁷⁴ 778 F.2d 83 (1985).

⁷⁵ *Chang*, 778 F.2d at 84.

⁷⁶ *Id.* at 85.

⁷⁷ *Id.*

⁷⁸ *Id.* at 9. See also *Ojeda-Toro*, 853 F.2d at 30. In this case, the court cited *Chang* to support its denial of relief to a plaintiff who was aware of her counsel's delinquency and chose to keep him as counsel. *Id.* at 30.

The court granted relief under 60(b)(6) upon a showing of the extraordinary circumstances involving a conflict of interest in the movant's attorney.⁷⁹ In *Marderosian v. Town of Spencer*,⁸⁰ the defendant filed a motion for relief asserting exceptional circumstances.⁸¹ The Massachusetts district court found that the defendant, as a layperson, could not be expected to recognize the potential conflict, thereby dispensing with the choice distinction.⁸² Next, the court found that counsel's closing argument may have actually prejudiced the jury.⁸³ The court also found that defense counsel's erroneous advice to the defendant was kept from the jury, and all of the findings were extraordinary circumstances warranting relief from judgment.⁸⁴

IV. COMPARISON OF SUPREME COURT AND FIRST CIRCUIT

A comparison of United State Supreme Court Cases and First Circuit cases reveals several discernible standards under which courts have granted 60(b)(6) relief.⁸⁵ In *United States v. Baus*,⁸⁶ the First Circuit Court of Appeals analogized its reasoning to the Supreme Court's reasoning in *Klapprott*.⁸⁷ The court found the circumstances in *Baus* to be extraordinary

⁷⁹ See *Marderosian*, 170 F.R.D. 335, 341(explaining actual conflict existed between town counsel and police chief) .

⁸⁰ 170 F.R.D. 335, 337.

⁸¹ *Id.* at 337.

⁸² *Id.* at 341.

⁸³ *Id.* at 342.

⁸⁴ *Id.*

⁸⁵ See *Link v. Wabash*, 370 U.S. at 633 (1962)(suggesting relief from failure to prosecute available under 60(b)(6)); *Klapprott v. United States*, 69 S. Ct. 384 at 390 (1949)(finding extraordinary circumstances present where petitioner jailed during all phases of default proceedings); *Rivera et al v. Puerto Rico Tel. Co.*, 921 F.3d at 395 (1st Cir. 1990)(justifying district court use of 60(b)(6) discretion to clarify conflicting court orders); *United States v. Baus*, 834 F.2d at 1124 (1st Cir. 1987)(reversing district court after finding 60(b)(6) extraordinary circumstances consisting of material breach of settlement agreement); *Marderosian v. Town of Spencer*, 170 F.R.D. at 342 (D. Mass 1997)(granting relief upon finding of attorney conflict of interest and no prejudice to opposing side); *United States v. Belanger*, 598 F.Supp. at 601 (D. Me 1984)(granting relief from judgment where court changed rule after judgment and prior to appeal expiration); *King v. Mordowanec*, 46 F.R.D. at 479 (D.R.I. 1969)(granting relief from dismissal where plaintiff unaware of attorney's gross neglect).

⁸⁶ 834 F.2d 1114 (1st Cir. 1987).

⁸⁷ *Baus*, 834 F.2d at 1121-1123; *Klapprott*, 69 S. Ct. at 390. The *Baus* court noted the petitioner in *Klapprott* waited four years to file for 60(b)(6) relief, while the petitioner in *Baus* waited five years before seeking relief. *Baus* 834 F.2d at 1117; *Klapprott*, 69 S. Ct. at 390. Although the delays were caused by different reasons, in *Klapprott* the petitioner was in the physical custody of the government, while in *Baus*, the petitioners were lulled into a false sense of security by claims of three successive Assistant United States Attorneys that they would not be prosecuted. *Baus*, 834 F.2d at 1117; *Klapprott*, 69 S. Ct. 390. In both cases, the court held they were reasonable delays. *Baus*, 834 F.2d at 1117; *Klapprott*, 69 S.

because the government assured the complainants that it would not attempt to collect a debt and later changed its position. The government substantially delayed enforcing its rights under settlement agreement, and it breached its obligations under the stipulation agreement.⁸⁸ Similarly, in *Klapprott*, the government held the petitioner in physical custody when a default citizenship judgment entered against him.⁸⁹ In both cases, the parties seeking relief were victims of faultless delay, and, therefore, the delay before seeking relief caused the court to grant 60(b)(6) motions in different factual circumstances.⁹⁰

In *Rivera et al. v. Puerto Rico Telephone Co.*,⁹¹ the court granted relief under 60(b)(6) and affirmed to cure procedural defects in the filing of an appeal.⁹² The delay of twenty-three days, far less than the five-year delay in *Baus* and the delay in *Claret*, was reasonable under the circumstances.⁹³ The cases therefore do not reveal a definitive pattern of factual standards, just very fact-specific balancing test in each case.

V. CONCLUSIONS

The attorney misconduct line of cases demonstrates only the gross neglect of an attorney will trigger 60(b)(6) relief, and, in some cases, even gross neglect alone is not enough.⁹⁴ There is similar discordance in the change of law line of cases.⁹⁵ The ambiguous wording of the rule has been interpreted narrowly, leaving legal scholars initial concerns unrealized.⁹⁶ Due to the other corrective remedies available under Rule 60(b) (1) - (5),

Ct. 390.

⁸⁸ *Baus*, 834 F.2d at 1122.

⁸⁹ *Klapprott*, 69 S. Ct. at 390.

⁹⁰ See *supra* note 72.

⁹¹ 921 F.2d 393 (1st Cir. 1990).

⁹² *Rivera et al v. Puerto Rico Telephone Co.*, 921 F.2d 393 (1st Cir. 1990).

There were several orders issued concerning an incorrect naming of the parties on plaintiff Rivera's appeal from a lower court denial of a motion for reconsideration. *Id.* Later in a defense motion for clarification, the lower court reversed an order granting the plaintiff's motion to amend their notice of appeal. *Id.* The defendant's motion was under rule 60(b)(6) and the appeals court affirmed the lower court. *Id.*

⁹³ *Id.* at 395. See also *Klapprott*, 69 S.Ct. at 390; *Baus*, 834 F.2d at 1122.

⁹⁴ See *Chang v. Smith*, 778 F.2d 83, 85 (1st Cir. 1985) (denying relief from "strategic decision" to take voluntary dismissal despite suspension of counsel during litigation); *Marderosian v. Town of Spencer*, 170 F.R.D. 335, 341 (D.Mass 1997) (granting relief when conflict of interest created by simultaneous representation of town and plaintiff); *King v. Mordowanec*, 46 F.R.D. 474,480 (D. R.I. 1969) (granting relief where plaintiffs unaware of counsel's gross neglect).

⁹⁵ See *Brown v. Clark*, 96 F.R.D. 166, 173 (D. Me.1982) (holding change in decisional law not grounds for relief under Rule); *United States v. Belanger*, 598 F. Supp598, 601 (D. Me. 1984)(holding change in local rule can be a ground for relief).

⁹⁶ See *supra* note 6.

courts only grant 60(b)(6) relief in very specific factual contexts.⁹⁷ The cases suggest that in order to gain 60(b)(6) relief, the motion must be brought within a short time after the one-year appeal period and must be the only alternative for the petitioner.⁹⁸ The courts frequently describe the lack of choice available to the petitioners when granting relief.⁹⁹

Each case is very fact specific, and the rule has consistently been narrowly construed. No consistent pattern or specific set of facts govern the application of the Rule, and its power is limited. The cases suggest that an attorney bringing a claim for relief under Rule 60(b)(6) must present a compelling reason for the delay in seeking relief, and should present a strong factual argument that the value of finality must give way to justice in a particular case. Accordingly, courts should continue to carefully use the Rule, reserving it for specific cases of injustice, and continue to protect the value of finality in litigation.

Mary C. Cavanagh

⁹⁷ See *supra* note 6.

⁹⁸ See *supra* note 16.

⁹⁹ See *supra* notes 16,69.

