MICHIGAN DEFENSE
QUARTERLY
Volume 41, No. 4 | 2025

Promoting Excellence in **Civil Litigation**

Appellate Practice Report

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Motions for Reconsideration Under Eastern District of Michigan Rule 7.1(h) No Longer Toll the Appeal Deadline

There are a number of reasons why a party facing an adverse decision in federal court might wish to seek reconsideration prior to appealing. But a word of caution is in order: as a recent decision from the United States Court of Appeals for the Sixth Circuit confirms, a motion for reconsideration brought under Eastern District of Michigan Rule 7.1(h) no longer tolls the usual 30-day notice-of-appeal deadline under Federal Rule of Appellate Procedure 4(a)(1)(A). *Miller v. William Beaumont Hosp.*, 121 F.4th 556 (6th Cir. 2024). Instead, a motion seeking reconsideration *must* be brought under Federal Rule of Civil Procedure 59(e) or 60(b).

Overview of Appeal Tolling Provisions under the Federal Rules

The Federal Rules of Appellate Procedure provide for tolling of the usual 30-day appeal period in civil cases upon the filing of certain motions seeking reconsideration of a district court's adverse decision resulting in a final judgment or order, such as:

- Motions "to alter or amend the judgment under Rule 59" (often used to seek reconsideration of a decision made on a motion to dismiss or for summary judgment);
- Motions "for a new trial under Rule 59"; and
- Motions "for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered."

Motions for Reconsideration

For many years, the Sixth Circuit treated motions for reconsideration filed under Eastern District of Michigan Local Rule 7.1 as equivalent to a Rule 59(e) ("motion to alter or amend a judgment") for purposes of Rule 4(a)(4)(A). *See, e.g., Quatrine v. Berghuis*, 751 Fed. App'x 885, 888 (6th Cir. 2018) (recognizing "both [Local Rule 7.1(h) and Rule 59(e)] [as] vehicles for a litigant to ask a court to correct a mistake of law or fact"). But as the Sixth Circuit recently observed in *Miller*, 121 F.4th at 557, Local Rule 7.1 has since been amended (since 2021) to provide that "[p]arties seeking reconsideration of final orders or judgments must file a motion under Federal Rule of Civil Procedure 59(e) or 60(b). The court will not grant reconsideration of such an order or judgment under this rule." E.D. Mich., *Notice of Amendments to Local Rules* 1 (Nov. 10, 2021). Thus, "[t]he Local Rule's amended text now plainly forecloses any continued construal as a Rule 59(e) motion when that motion concerns a final order." *Miller*, 121 F.4th at 558.

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The Sixth Circuit applied that change to devastating effect in *Miller*, where the plaintiff unwittingly filed a motion for reconsideration under Local Rule 7.1(h) from the district court's decision granting summary judgment to the defendant, instead of a motion invoking either Rule 59(e) or 60(b). The Sixth Circuit explained that this meant that the plaintiff's motion for reconsideration "did not alter the thirty-day notice-of-appeal deadline." *Id.* "And because a timely notice of appeal is a jurisdictional requirement," the Court held that it lacked jurisdiction over the plaintiff's appeal from the district court's summary judgment ruling. *Id.*

By contrast, the Sixth Circuit appears to be still willing to construe motions for reconsideration under Western District of Michigan Rule 7.4, which does not contain the same restrictive language as Eastern District of Michigan Rule 7.1(h), as analogous to a motion brought under Rule 59(e) or Rule 60(b). *See, e.g., Barnaby v. Witkowski,* No. 21-1598, 2022 WL 5263832, at *2 (6th Cir. September 26, 2022) (construing *pro se* motion for reconsideration under Western District of Michigan Local Rule 7.4 as brought under Rule 60(b)); *McDonald v. Lasslett*, No. 18-2435, 2019 WL 2592572, at *1 (6th Cir. May 28, 2019) ("The Federal Rules of Civil Procedure do not provide for a 'motion for reconsideration' so courts often construe those filings as Rule 59(e) motions when they are filed within twenty-eight days of judgment, or, if filed later, Rule 60(b) motions."). The better practice, however, would be to expressly designate such a motion as invoking either Rule 59(e) or 60(b).

Conclusion

While motions for reconsideration can be valuable in providing a trial court an opportunity to take a "second look" at a decision entered on a motion to dismiss or for summary judgment, the Sixth Circuit's decision in *Miller* serves as a cautionary tale. A party considering filing such a motion in the Eastern District of Michigan should no longer rely on Local 7.1(h). Instead, the motion should specifically invoke review under either Rule 59(e) or 60(b). And while the Sixth Circuit has thus far not deviated from its historical practice of construing motions for reconsideration filed pursuant to Western District of Michigan Rule 7.4 as a Rule 59(e) or Rule 60(b) motion, parties would be wise to use the same caution when seeking reconsideration in that court.