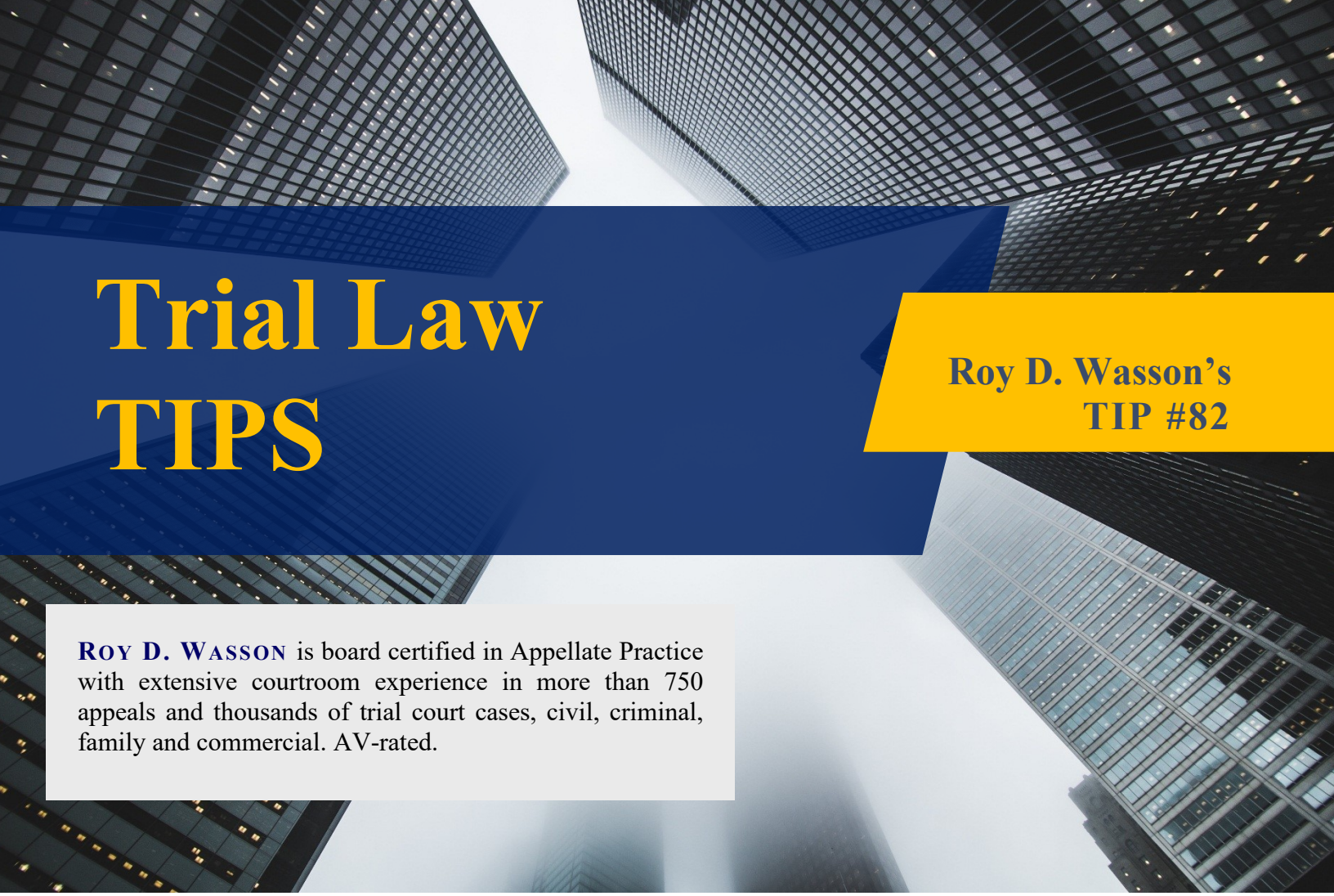

Trial Law TIPS

Roy D. Wasson's TIP #82

Roy D. Wasson is board certified in Appellate Practice with extensive courtroom experience in more than 750 appeals and thousands of trial court cases, civil, criminal, family and commercial. AV-rated.

Motions for "Rehearing" vs. Motions for "Reconsideration"— Difference is Much More than Semantics

Words are the stock in trade of attorneys, but we often get in the habit of using certain common legal terms incorrectly. The example that comes to mind first is using "filed" wrong. We say we "filed" a notice of intent to sue a doctor or a proposal for settlement when we mean we "served" those documents. Sometimes the difference can be critical.

Another example of a commonly misused term is when we say we are going to file a motion for "rehearing" of a judge's ruling. Often what we should do instead is move for "reconsideration." This Tip discusses the differences between those two terms.

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Rehearing Motions Are Limited to Final Orders

The first difference between rehearing and reconsideration is that rehearing is limited to final orders. Rule 1.530 is the Rule of Civil Procedure that gives trial courts authority to grant rehearing. That rule is limited to rehearing of ***final*** orders. "Rule 1.530 has been consistently construed to authorize rehearings only of orders and judgments which are final in nature." *Deal v. Deal,* 783 So. 2d 319, 321 (Fla. 5th DCA 2001). *Accord*, *Longo v. Longo*, 515 So. 2d 1013 (Fla. 1st DCA 1987); *Gordon v. Barley*, 383 So. 2d 322 (Fla. 5th DCA 1980); *Florida Farm Bureau Ins. Co. v. Austin Carpet Serv., Inc.*, 382 So. 2d 305 (Fla. 1st DCA 1979); *see also Potucek v. Smeja*, 419 So. 2d 1192 (Fla. 2d DCA 1982).

The Florida Supreme Court has explained the law in this area as follows:

> A literal interpretation of [Rule 1.530] would seem to indicate that a motion for rehearing may be directed only to final judgments rendered by a court, since that is the only judicial action specified in the rule authorizing the filing of such a motion. If the rule-making authority had intended to authorize the filing of a motion for rehearing directed to an interlocutory order, it could easily have so provided. Unless the filing of a motion for rehearing to an interlocutory order is authorized by a rule of court promulgated by the rule-making authority, then its filing is improper and would not toll the rendition date of the order or the running of the time for seeking appellate review of the order complained about.

Wagner v. Bieley, Wagner & Assocs., Inc., 263 So. 2d at 1 (Fla. 1970)(quoting Home News Publ'g Co. v. U-M Publ'g, Inc., 246 So. 2d 117 (Fla. 1st DCA 1971)).

Thus, if you are dealing with a non-final (also called an "interlocutory") order, the proper method of asking the judge to revisit that ruling is through a motion for reconsideration,

not rehearing. A "final" order in this context does not simply mean an order that the judge has characterized as "final," but means the last order in the case; one that puts an end to the litigation (or at least to the litigation against one party). Just because the judge has indicated that he or she has finally concluded a given issue does not make the order final and reviewable under Rule 1.530.

Motion Seeking Rehearing or Reconsideration of Nonfinal Orders Do Not Toll Time for Appeal

As indicated in the foregoing quote from the *Wagner* case, a motion seeking rehearing or reconsideration of a nonfinal order will not toll the time to appeal that nonfinal order, if it is one from which immediate appellate review is possible. The Fifth District in the *Deal* case, *supra*, held as follows:

> We conclude, therefore, that a motion for rehearing directed to a non-final order, such as the order in the instant case, is not authorized under the rules and does not toll the time for filing the notice of appeal. *See Bennett v. Bennett*, 645 So. 2d 32 (Fla. 5th DCA 1994); *Freeman v. Perdue*, 588 So. 2d 671 (Fla. 5th DCA 1991); *see also Wagner*; *National Assurance Underwriters, Inc. v. Kelley*, 702 So. 2d 614 (Fla. 4th DCA 1997); *Nationwide Ins. Co. v. Forrest*, 682 So. 2d 672 (Fla. 4th DCA 1996); *Longo*; *Smith v. Weede*, 433 So. 2d 992 (Fla. 5th DCA 1983). *Hubert v. Division of Admin., State Dep't of Transp.*, 425 So. 2d 671 (Fla. 2d DCA 1983); *Potucek*. Here, the notice of appeal was not filed within thirty days of the order being reviewed, but was filed within thirty days of rendition of the order denying the appellant's motion for rehearing. Thus the notice of appeal filed in the instant case is untimely and does not confer on this court jurisdiction to hear this appeal. Accordingly, this appeal must be dismissed.

Deal, supra, 783 So. 2d at 321 (footnote omitted).

No Time Deadline for Reconsideration Motions

Contrary to popular misunderstanding, you can ask a judge to reconsider a prior nonfinal ruling at any time before the end of the case. The ten-day time limit for serving a motion for rehearing under Fla. R. Civ. P. 1.530 does not apply to motions for reconsideration, because Rule 1.530 only applies to rehearing of final "judgments rendered by the court and ***not to interlocutory orders.***" *Gordon v. Barley*, 383 So. 2d 322, 323 (Fla. 5th DCA 1980)(emphasis added).

There is no time deadline for motions for reconsideration. "It is well settled in this state that a trial court has inherent authority to reconsider . . . any of its interlocutory rulings prior to the entry of a final judgment or final order in the cause." *Bettez v. City of Miami*, 510 So. 2d 1242, 1243 (Fla. 3d DCA 1987).

Conclusion

It may not be easy for attorneys who have for all their careers been confusing “rehearing” and “reconsideration,” but the differences are substantial and could mean the difference between winning or losing your case. Therefore, as hard as it may be to get used to new terminology, you have to . . .

Keep Tryin!

Roy

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