
Pros/Def atty stipulate to set aside court finding and impose stipulated fine

5 messages

Liz Stankewitz <liz@cheboygancounty.net>
Reply-To: madcm@googlegroups.com
To: "madcm@googlegroups.com" <madcm@googlegroups.com>

Wed, Oct 18, 2017 at 11:05 AM

I'm looking for your guidance- here's the situation:

In March, a large logging/trucking company is given a ticket for overweight. The defendant asks for an informal hearing. Defendant is found responsible and a fine of \$7557.00 is assessed along with justice system fees and costs totaling \$7722. Defendant requested an appeal but did not have money to post the bond so the case was not set for a formal hearing. In light of the hefty fine, the Court allowed 4 months to pay. The defendant did not pay and after 4 months expired he was sent a 14 day notice to pay in full. After the 14 days, the defendant (owner of company who appeared for the hearing) was sent an order to show cause. The defendant appeared and after much discussion with the collections clerk, worked out a payment arrangement. (The defendant was not addressed by the judge on the record – it is our practice that if the collections clerk can get the defendant to make arrangements the judge signs an order for a payment plan and dismisses the show cause.) During his time in the building he also talked to the prosecutor- he believed that his case warranted some type of relief because the fine was so hefty it would put him out of business. Several days passed and the court received a "Stipulation and Order to Set Aside Prior Court Finding of Responsibility Fine and Rather Impose Stipulated Fine of \$3000.00" from an attorney that the defendant apparently hired. The stip cites MCR 2.614 as authority to set aside the judgment and fine. How would your court handle this?

I appreciate any input. Thank you.

Liz

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James Patrick Brennan <jbrennan@ferndalecourt.com>
Reply-To: madcm@googlegroups.com
To: madcm@googlegroups.com

Wed, Oct 18, 2017 at 11:19 AM

Under MCR 2.612, since both parties stipulated, you could pass it directly to your Judge for signature or scheduling a hearing, if the Judge so desires but I believe it is beyond my authority to sign and set aside a judgment from the informal hearing. Brennan

Sent from my iPad

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Wiewiora, John <WiewioraJo@co.muskegon.mi.us>
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To: "madcm@googlegroups.com" <madcm@googlegroups.com>

Wed, Oct 18, 2017 at 1:12 PM

I would agree with James that the matter is properly brought before the assigned judge because the matter went so far as an order to show cause and a judge was assigned and it therefore has moved past the Magistrate level. However, MCR2.612 requires a Motion be brought stating the reason for which relief is sought. It would therefore be set for hearing on the Motion, and, taking into account the Plaintiff's stipulation, the judge would have to determine if the agreed upon relief is justified. If all that was filed is a stip and Order that do not address the reason, I would not see that as proper under the court rule. Of course, the judge is free to do as he/she sees fit, but should have the option to deny the Motion or to fashion the Order based on what is presented, including imposing a higher or lower fine than agreed upon.

From: madcm@googlegroups.com [mailto:madcm@googlegroups.com] **On Behalf Of** James Patrick Brennan
Sent: Wednesday, October 18, 2017 11:19 AM
To: madcm@googlegroups.com
Subject: Re: Pros/Def atty stipulate to set aside court finding and impose stipulated fine

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James Pahl <jbpahl0824@gmail.com>
Reply-To: madcm@googlegroups.com
To: MADCM <madcm@googlegroups.com>

Wed, Oct 18, 2017 at 3:06 PM

I would say set for hearing on the Motion also. MCR 2.614 states they must file within 21 days of final judgment. MCR 2.612 allows up to one year, but they must specify one of the reasons in the court rule to be successful.

Jim



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James Patrick Brennan <jbrennan@ferndalecourt.com>
Reply-To: madcm@googlegroups.com
To: MADCM <madcm@googlegroups.com>

Wed, Oct 18, 2017 at 3:14 PM

Yes but MCR 2.612(e) says in the interest of justice, I think? Brennan

Sent from my Verizon 4G LTE Droid
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