

RULE 6

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MOTION FOR A DIRECTED VERDICT AND FOR JUDGMENT

NOTWITHSTANDING THE VERDICT

A. Motion for directed verdict; when made; effect. Any party may move for a directed verdict at the close of the evidence offered by an opponent or at the close of all the evidence. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

B. Judgment notwithstanding the verdict.

B.(1) Grounds. When a motion for a directed verdict which should have been granted has been refused and a verdict is rendered against the applicant, the court may, on motion, render a judgment notwithstanding the verdict, or set aside any judgment which may have been entered and render another judgment, as the case may require.

B.(2) Reserving ruling on directed verdict motion. In any case where, in the opinion of the court, a motion for a directed verdict ought to be granted, it may nevertheless, at the request of the adverse party, submit the case to the jury with leave to the moving party to move for judgment in his favor if the verdict is otherwise than as would have been directed.

B.(3) Alternative motion for new trial. A motion in the alternative for a new trial may be joined with a motion for judgment notwithstanding the

verdict, and unless so joined shall, in the event that a motion for judgment notwithstanding the verdict is filed, be deemed waived. When both motions are filed, the motion for judgment notwithstanding the verdict shall have precedence over the motion for a new trial, and if granted the court shall, nevertheless, rule on the motion for a new trial and assign such reasons therefor as would apply had the motion for judgment notwithstanding the verdict been denied, and shall make and file an order in accordance with said ruling.

B.(4) Time for motion and ruling. A motion for judgment notwithstanding the verdict shall be filed within ten (10) days after the filing of the judgment sought to be set aside, or such further time as the court may allow. The motion shall be heard and determined by the court within 55 days of the time of the entry of the judgment, and not thereafter, and if not so heard and determined within said time, the motion shall conclusively be deemed denied.

B.(5) Duties of the clerk. The clerk shall, on the date an order made pursuant to this section is entered or on the date a motion is deemed denied pursuant to subsection (4) of this section, whichever is earlier, mail a copy of the order and notice of the date of entry of the order or denial of the motion to each party who is not in default for failure to appear. The clerk also shall make a note in the docket of the mailing.

9 B.(6) Motion for new trial after judgment notwithstanding the verdict. The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial pursuant to Rule 63 not later than 10 days after entry of the judgment notwithstanding the verdict.

~~COMMENT: Section A. is the modified form of Federal Rule 50 (a)~~

Rule 61.

Background note.

ORS sections superseded

18.230, 18.240, 18.250, 18.140.

COMMENT:

Section ~~AX~~ 61 A is based upon Federal Rule 50(a). These rules eliminate the device of nonsuit completely. The proper motion to ~~test~~ sufficiency of the evidence ~~both at the close of the plaintiffs case~~ in a jury case, ~~XXXX~~ at the close of the plaintiffs case or any other time before submission to the jury, is for directed verdict. The major change from the nonsuit practice is that a directed verdict at the close of the plaintiffs case would be a dismissal with prejudice whereas the nonsuit was not. For a dismissal in a non jury case under rule 54 the judge may direct that dismissal be without prejudice. (If a judge feels that ~~XXXXXXXXXXXXXXXX~~ a plaintiff should be given a chance to refile when the evidence presented by the plaintiff was insufficient, the trial judge can grant the plaintiff leave to take a dismissal without prejudice under rule 54 A instead of directing a verdict. *For a non jury case*)

Section B is based upon ORS 18.140. The reference to failure to state a cause of action in a pleading as a ground for judgment NOV was eliminated as unnecessary and inconsistent with the pleading rules. Subsection B (6) ~~XXXXXXXXXXXXXXXX~~ is based upon Federal rule 50(c)(2)

RULE 61

MOTION FOR A DIRECTED VERDICT AND FOR JUDGMENT
NOTWITHSTANDING THE VERDICT

A. Motion for directed verdict; when made; effect. Any party may move for a directed verdict at the close of the evidence offered by an opponent or at the close of all the evidence. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

B. Judgment notwithstanding the verdict.

B.(1) Grounds. When a motion for a directed verdict which should have been granted has been refused and a verdict is rendered against the applicant, the court may, on motion, render a judgment notwithstanding the verdict, or set aside any judgment which may have been entered and render another judgment, as the case may require.

B.(2) Reserving ruling on directed verdict motion. In any case where, in the opinion of the court, a motion for a directed verdict ought to be granted, it may nevertheless, at the request of the adverse party, submit the case to the jury with leave to the moving party to move for judgment in his favor if the verdict is

otherwise than as would have been directed.

B.(3) Alternative motion for new trial. A motion in the alternative for a new trial may be joined with a motion for judgment notwithstanding the verdict, and unless so joined shall, in the event that a motion for judgment notwithstanding the verdict is filed, be deemed waived. When both motions are filed, the motion for judgment notwithstanding the verdict shall have precedence over the motion for a new trial, and if granted the court shall, nevertheless, rule on the motion for a new trial and assign such reasons therefor as would apply had the motion for judgment notwithstanding the verdict been denied, and shall make and file an order in accordance with said ruling.

B.(4) Time for motion and ruling. A motion for judgment notwithstanding the verdict shall be filed within ten (10) days after the filing of the judgment sought to be set aside, or such further time as the court may allow. The motion shall be heard and determined by the court within 55 days of the time of the entry of the judgment, and not thereafter, and if not so heard and determined within said time, the motion shall conclusively be deemed denied.

B.(5) Duties of the clerk. The clerk shall, on the date an order made pursuant to this section is entered or on the date a motion is deemed denied pursuant to subsection (4) of this section, whichever is earlier, mail a copy of the order and notice of the date of entry of the order or denial of the motion to each party who is not in default for failure to appear. The clerk also shall make a note in the docket of the mailing.

B. (6) Motion for new trial after judgment notwithstanding the verdict. The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may seve a motion for a new trial pursuant to Rule ⁶⁴~~63~~ not later than 10 days after entry of the judgment notwithstanding the verdict.

BACKGROUND NOTE

ORS sections superseded: 18.230, 18.240, 18.250, 18.140,

COMMENT

Section 61 A. is based upon Federal Rule 50(a). These rules eliminate the device of nonsuit completely. The proper motion to test sufficiency of the evidence in a jury case, at the close of the plaintiff's case, or any other time before submission to the jury, is for directed verdict. The major change from the nonsuit practice is that a directed verdict at the close of the plaintiff's case would be a dismissal with prejudice, whereas the nonsuit was not. For a dismissal in a non-jury case under Rule 54, the judge may direct that dismissal be without prejudice. In either case, if a judge feels that a plaintiff should be given a chance to refile when the evidence presented by the plaintiff was insufficient, the trial judge can grant the plaintiff leave to take a dismissal without prejudice under Rule 54 A. instead of directing a verdict. *ORS 18.240 was eliminated.*

Section ⁶¹B. is based upon ORS 18.140. The reference to failure to state a cause of action in a pleading as a ground for judgment NOV was eliminated as unnecessary and inconsistent with the pleading rules. Subsection B. (6) is based upon Federal Rule 50(c) (2).

RULE 61

VERDICTS, GENERAL AND SPECIAL

A. General verdict. A general verdict is that by which the jury pronounces generally upon all or any of the issues either in favor of the plaintiff or defendant.

B. Special verdict. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires such party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

C. General verdict accompanied by answer to interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more

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issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and the answers shall be entered. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

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D. Action for specific personal property. *stat.* In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant by answer claims a return thereof, the jury shall assess the value of the property, if their verdict is in favor of the plaintiff, or if they find in favor of the defendant, and that defendant is entitled to a return thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer,

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Oct 31, 1948

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RULE 62.

VERDICTS, GENERAL AND SPECIAL

A. General verdict. A general verdict is that by which the jury pronounces generally upon all or any of the issues either in favor of the plaintiff or defendant.

B. Special verdict. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his rights to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

C. General verdict accompanied by answer to interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers

to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and the answers shall be entered. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

D. Action for specific personal property. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff or the defendant by his answer claims a return thereof, the jury shall assess the value of the property, if their verdict is in favor of the plaintiff, or if they find in favor of the defendant, and that he is entitled to a return thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention or taking and withholding of such property.

^{F12} E. Assessment of amount of recovery. When a verdict is found for the plaintiff in an action for recovery of money, or for the defendant when a counterclaim for the amount of the plaintiff's claim as established, the jury shall also assess the amount of recovery; they may also, under the direction of the court assess the amount of the recovery when the court gives judgment for the plaintiff on the answer.

~~COMMENT: This is Committee Rule G. What does the last sentence of section E. (ORS 17.425) mean?~~

Rule 62.

Background note.

ORS. Sections Superseded

17.403, ~~17.410~~, 17.415, 17.420, 17.425

COMMENT:

~~This rule combines Existing ORS sections and federal Rule 49.~~
Sections B and C are based upon Federal Rule 49 (a) and (b). Section
C is based upon ORS 17.410 and Section D is based upon ORS 17.425.

RULE 62

VERDICTS, GENERAL AND SPECIAL

A. General verdict. A general verdict is that by which the jury pronounces generally upon all or any of the issues either in favor of the plaintiff or defendant.

B. Special verdict. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his rights to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

C. General verdict accompanied by answer to interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of

fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and the answers shall be entered. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

D. Action for specific personal property. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant by his answer claims a return thereof, the jury shall assess the value of the property, if their verdict is in favor of the plaintiff, or if they find in favor of the defendant, and that he is entitled to a return thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention or taking and withholding of such property.

E. Assessment of amount of recovery. When a verdict is found for the plaintiff in an action for recovery of money, or for the defendant when a counterclaim for the amount of the plaintiff's claim as established, the jury shall also assess the amount of recovery; they may also, under the direction of the court assess the amount of the recovery when the court gives judgment for the plaintiff on the answer.

BACKGROUND NOTE

ORS sections superseded: 17.40⁵~~3~~, 17.410, 17.415, 17.420, 17.425.

COMMENT

Sections B. and C. are based upon Federal Rule 49 (a) and (b). Section ~~D.~~ is based upon ORS 17.410 and Section ~~E.~~ is based upon ORS 17.425.

which the prevailing party has sustained by reason of the detention or taking and withholding of such property.

E. Assessment of amount of recovery. When a verdict is found for the plaintiff in an action for recovery of money, or for the defendant when a counterclaim for the recovery of money is established beyond the amount of the plaintiff's claim as established, the jury shall also assess the amount of recovery; they may also, under the direction of the court, assess the amount of the recovery when the court gives judgment for the plaintiff on the answer.

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BACKGROUND NOTE

ORS sections superseded: 17.405, 17.410, 17.415, 17.420, 17.425.

COMMENT

Sections 61 B. and 61 C. are based upon Federal Rule 49 (a) and (b). Section 61 D. is based upon ORS 17.410, and Section 61 E. is based upon ORS 17.425.

RULE 62

FINDINGS OF FACT

A. Necessity. Whenever any party appearing in a civil action or proceeding tried by the court so demands prior to the commencement of the trial, the court shall make special findings of fact, and shall state separately its conclusions of law thereon. In the absence of such a demand for special findings, the court may make either general or special findings. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact or conclusions of law appear therein.

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B. Proposed findings; objections. Within 10 days after the court has made its decision, any special findings requested by any party, or proposed by the court, shall be served upon all parties who have appeared in the case and shall be filed with the clerk; and any party may, within 10 days after such service object to such proposed findings or any part thereof, and request other, different or additional special findings, whether or not such party has previously requested special findings. Any such objections or requests for other, different or additional special findings shall be heard and determined by the court within 30 days after the date of the filing thereof; and, if not so heard and determined, any such objections and requests for such other, different or additional special findings shall conclusively be deemed denied.

C. Entry of judgment. Upon (1) the determination of any objections to proposed special findings and of any requests for other different or additional special findings, or (2) the expiration of the time for filing such objections and requests if none is filed, or (3) the expiration of the time at which such objections or requests are deemed denied, the court shall enter the appropriate order or judgment. Any such judgment or order filed prior to the expiration of the periods above set forth shall be deemed not entered until the expiration of said periods.

D. Extending or lessening time. Prior to the expiration of the times provided in subsections B. and C. of this rule, the time for serving and filing special findings, or for objecting

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RULE 62

FINDINGS OF FACT

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B. Proposed findings; objections. Within 10 days after the court has made its decision, any special findings requested by any party, or proposed by the court, shall be served upon all other parties who have appeared in the case and shall be filed with the clerk; and any such other party may, within 10 days after such service object to such proposed findings or any part thereof, and request other, different or additional special findings, whether or not such party has previously requested special findings. Any such objections or requests for other, different or additional special findings shall be heard and determined by the court within 30 days after the date of the filing thereof; and, if not so heard and determined, any such objections and requests for such other, different or additional special findings shall conclusively be deemed denied.

C. Entry of judgment. Upon (1) the determination of any objections to proposed special findings and of any requests for other different or additional special findings, or (2) the expiration of the time for filing such objections and requests if none is filed, or (3) the expiration of the time at which such objections or requests are deemed denied, the court shall enter the appropriate order or judgment. Any such judgment or order filed

prior to the expiration of the periods above set forth shall be deemed not entered until the expiration of said periods.

D. Extending or lessening time. Prior to the expiration of the times provided in subsections (3) and (4) of this section, the time for serving and filing special findings, or for objecting to and requesting other, different or additional special findings may be extended or lessened by the trial court upon the stipulation of the parties or for good cause shown; but in no event shall the time be extended more than 30 days.

E Requests For Findings of Fact on objections to Findings are not necessary for purposes of Appellate Review

F. Effect of findings of fact. In an action tried without a jury, except as provided in ORS 19.125, the findings of the court upon the facts shall have the same force and effect, and be equally conclusive, as the verdict of a jury.

COMMENT: This is Committee Rule H. The second sentence was added to section A. It comes from Federal Rule 52 (a). Section (6) of the committee's draft rules was eliminated because it appears to be a rule of appellate procedure. The committee's section (7) was replaced by the modified form of ORS 17.441 previously submitted to the Council as part of the law-equity revisions. ORS 17.435, which is the language used by the committee, appears in Rule 63.

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Background note

ORS sections superseded.

17.431, 17.441

Comment:

Sections ~~XXXXXX~~ 63 A through E are based upon ORS 17.431. The last sentence was added to section 63 A. Section F is based upon ORS 17.441, changed to refer to trial by the court rather than suit in equity.

RULE 63

FINDINGS OF FACT

A. Necessity. Whenever any party appearing in a civil proceeding tried by the court so demands prior to the commencement of the trial, the court shall make special findings of fact, and shall state separately its conclusions of law thereon. In the absence of such a demand for special findings, the court may make either general or special findings. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact or conclusions of law appear therein.

B. Proposed findings; objections. Within 10 days after the court has made its decision, any special findings requested by any party, or proposed by the court, shall be served upon all other parties who have appeared in the case and shall be filed with the clerk; and any such other party may, within 10 days after such service object to such proposed findings or any part thereof, and request other, different or additional special findings, whether or not such party has previously requested special findings. Any such objections or requests for other, different or additional special findings shall be heard and determined by the court within 30 days after the date of the filing thereof; and, if not so heard and determined, any such objections and requests for such other, different or additional special findings shall conclusively be deemed denied.

C. Entry of judgment. Upon (1) the determination of any objections to proposed special findings and of any requests for

other different or additional special findings, or (2) the expiration of the time for filing such objections and requests if none is filed, or (3) the expiration of the time at which such objections or requests are deemed denied, the court shall enter the appropriate order or judgment. Any such judgment or order filed prior to the expiration of the periods above set forth shall be deemed not entered until the expiration of said periods.

D. Extending or lessening time. Prior to the expiration of the times provided in ~~sections~~ ^B (3) and ^C (4) of this ^{Rule} section, the time for serving and filing special findings, or for objecting to and requesting other, different or additional special findings, may be extended or lessened by the trial court upon the stipulation of the parties or for good cause shown; but in no event shall the time be extended more than 30 days.

E. Requests for findings of fact or objections to findings are not necessary for purposes of appellate review.

F. Effect of findings of fact. In an action tried without a jury, except as provided in ORS 19.125, the findings of the court upon the facts shall have the same force and effect, and be equally conclusive, as the verdict of a jury.

BCKGROUND NOTE

ORS sections superseded: 17.431, 17.441.

COMMENT

Sections 63 A. through E. are based upon ORS 17.431. The last sentence was added to section 63 A. Section ⁶³ F. is based upon ORS 17.441, changed to refer to trial by the court rather than suit in equity.

to and requesting other, different or additional special findings, may be extended or lessened by the trial court upon the stipulation of the parties or for good cause shown; but in no event shall the time be extended more than 30 days.

E. Necessity. Requests for findings of fact or objections to findings are not necessary for purposes of appellate review.

F. Effect of findings of fact. In an action or proceeding tried without a jury, except as provided in ORS 19.125, the *court's* findings of ~~the court upon the facts~~ shall have the same force and effect, and be equally conclusive, as the verdict of a jury.

BACKGROUND NOTE

ORS sections superseded: 17.431, 17.441.

COMMENT

Sections 62 A. through E. are based upon ORS 17.431. The last sentence was added to section 62 A. Section 62 F. is based upon ORS 17.441, changed to refer to trial by the court rather than suit in equity.

RULE 63

JUDGMENT NOTWITHSTANDING THE VERDICT

A. Grounds. When a motion for a directed verdict which should have been granted has been refused and a verdict is rendered against the applicant, the court may, on motion, render a judgment notwithstanding the verdict, or set aside any judgment which may have been entered and render another judgment, as the case may require.

B. Reserving ruling on directed verdict motion. In any case where, in the opinion of the court, a motion for a directed verdict ought to be granted, it may nevertheless, at the request

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of the adverse party, submit the case to the jury with leave to the moving party to move for judgment in such party's favor if the verdict is otherwise than as would have been directed.

C. Alternative motion for new trial. A motion in the alternative for a new trial may be joined with a motion for judgment notwithstanding the verdict, and unless so joined shall, in the event that a motion for judgment notwithstanding the verdict is filed, be deemed waived. When both motions are filed, the motion for judgment notwithstanding the verdict shall have precedence over the motion for a new trial, and if granted the court shall, nevertheless, rule on the motion for a new trial and assign such reasons therefor as would apply had the motion for judgment notwithstanding the verdict been denied, and shall make and file an order in accordance with said ruling.

D. Time for motion and ruling. A motion for judgment notwithstanding the verdict shall be filed ^{not later than} ~~within~~ ten (10) days after the filing of the judgment sought to be set aside, or such further time as the court may allow. The motion shall be heard and determined by the court within 55 days of the time of the ~~entry~~ ^{Filing} of the judgment, and not thereafter, and if not so heard and determined within said time, the motion shall conclusively be deemed denied.

E. Duties of the clerk. The clerk shall, on the date an order made pursuant to this rule is entered or on the date a motion is deemed denied pursuant to section D. of this

RULE 6~~5~~⁴

NEW TRIALS

A. New trial defined. A new trial is a re-examination of an issue of fact in the same court after judgment.

B. Jury trial; grounds for new trial. A former judgment may be set aside and a new trial granted in an action where there has been a trial by jury on the motion of the party aggrieved for any of the following causes materially affecting the substantial rights of such party:

B.(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial.

B.(2) Misconduct of the jury or prevailing party.

B.(3) Accident or surprise which ordinary prudence could not have guarded against.

B.(4) Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial.

B.(5) Excessive damages, appearing to have been given under the influence of passion or prejudice.

B.(6) Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

B.(7) Error in law occurring at the trial and objected to by the party making the application.

C. New trial in case tried without a jury. In an action tried without a jury, a former judgment may be set aside and a new trial granted on motion of the party aggrieved on any grounds set forth in subsections (1), (2), (3), (4) or (7) of section B. of this Rule where applicable. On a motion for a new trial in an action tried without a jury, the court may

open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

D. Specification of grounds of motion; when motion must be on affidavits.

In all cases of motion for a new trial, the grounds thereof shall be plainly specified, and no cause of new trial not so stated shall be considered or regarded by the court. When the motion is made for a cause mentioned in subsections (1) to (4) of section F. of this Rule, it shall be upon affidavit, setting forth the facts upon which the motion is based.

E. When counteraffidavits are allowed; affidavits as to newly discovered evidence; former proceedings considered. If the motion is supported by affidavits, counteraffidavits may be offered by the adverse party. If the cause is newly discovered evidence, the affidavits of any witness or witnesses showing what their testimony will be, shall be produced, or good reasons shown for their nonproduction. In the consideration of any motion for a new trial, reference may be had to any proceedings in the case, prior to the verdict or other decision sought to be set aside.

F. Time of motion; counteraffidavits; hearing and determination.

A motion to set aside a judgment and for a new trial, with the affidavits, if any, in support thereof, shall be filed within 10 days after ^Fthe filing of the judgment sought to be set aside, or such further time as the court may allow. When the adverse party is entitled to oppose the motion by counteraffidavits, he shall file the same within 10 days after the filing of the motion, or such further time as the court may allow. The motion shall

be heard and determined by the court within 55 days from the time of the entry of judgment, and not thereafter, and if not so heard and determined within said time, the motion shall conclusively be deemed denied.

G. New trial on court's own motion; review. If a new trial is granted by the court on its own motion, the order shall so state and shall be made within 30 days after the filing of the judgment. Such order shall contain a statement setting forth fully the grounds upon which the order was made, which statement shall be a part of the record in the case.

H. Remittitur and additur. When a finding is made that the only error in the trial is the inadequacy or excessiveness of the verdict, the court may deny a motion for new trial on condition that within 10 days the non-moving party consents in writing to the entry of judgment of an amount found by the judge to be the lowest or highest amount respectively which the evidence will support.

COMMENT:

A. This is ORS 17.605.

B. This is ORS 17.610 with the language changed as submitted in the prior law - equity revisions. The grounds for new trial are unchanged but "and excepted to" is changed to "objected to" in ground (7).

C. This is the modified version of 17.435 previously submitted to the Council as part of the law - equity revisions. The last sentence comes from Federal Rule 59 (a).

D. This is ORS 17.620.

E. This is ORS 17.625.

F. This is ORS 17.615.

G. This is ORS 17.630. The last sentence of that statute, however, will have to remain as a statute as it relates to appellate procedure.

Rule 64.

Background Note.

ORS sections superseded

ORS. 17.435, 17.605, 17.610, 17.615,
17.620, 17.625, 17.630.

Comment:

this Rule is based upon existing ORS sections. Section C is based on 17.435 but the language is modified to refer to a case tried without a jury rather than a suit in equity and the last sentence is new. The last sentence of ORS 17.630 is ~~not~~ included and will remain as a statute as it ~~is~~ ~~a~~ relates to appellate procedure.

RULE 64
NEW TRIALS

A. New trial defined. A new trial is a re-examination of an issue of fact in the same court after judgment.

B. Jury trial; grounds for new trial. A former judgment may be set aside and a new trial granted in an action where there has been a trial by jury on the motion of the party aggrieved for any of the following causes materially affecting the substantial rights of such party:

B.(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having fair trial.

B.(2) Misconduct of the jury or prevailing party.

B.(3) Accident or surprise which ordinary prudence could not have guarded against.

B.(4) Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial.

B.(5) Excessive damages, appearing to have been given under the influence of passion or prejudice.

B.(6) Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

B.(7) Error in law occurring at the trial and objected to by the party making the application.

C. New trial in case tried without a jury. In an action tried

without a jury, a former judgment may be set aside and a new trial granted on motion of the party aggrieved on any grounds set forth in ~~subsections (1), (2), (3), (4) or (7) of~~ section B. of this rule where applicable. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

D. Specification of grounds of motion; when motion must be on affidavits. In all cases of motion for a new trial, the grounds thereof shall be plainly specified, and no cause of new trial not so stated shall be considered or regarded by the court. When the motion is made for a cause mentioned in subsections (1) to (4) of section F. of this rule, it shall be upon affidavit, setting forth the facts upon which the motion is based.

E. When counteraffidavits are allowed; affidavits as to newly discovered evidence; former proceedings considered. If the motion is supported by affidavits, counteraffidavits may be offered by the adverse party. If the cause is newly discovered evidence, the affidavits of any witness or witnesses showing what their testimony will be, shall be produced, or good reasons shown for their nonproduction. In the consideration of any motion for a new trial, reference may be had to any proceedings in the case, prior to the verdict or other decision sought to be set aside.

F. Time of motion; counteraffidavits; hearing and determination. A motion to set aside a judgment and for a new trial, with the affidavits, if any, in support thereof, shall be filed within 10 days after

the filing of the judgment sought to be set aside, or such further time as the court may allow. When the adverse party is entitled to oppose the motion by counteraffidavits, he shall file the same within 10 days after the filing of the motion, or such further time as the court may allow. The motion shall be heard and determined by the court within 55 days from the time of the entry of the judgment, and not thereafter, and if not so heard and determined within said time, the motion shall conclusively be deemed denied.

G. New trial on court's own motion; review. If a new trial is granted by the court on its own motion, the order shall so state and shall be made within 30 days after the filing of the judgment. Such order shall contain a statement setting forth fully the grounds upon which the order was made, which statement shall be a part of the record in the case.

BACKGROUND NOTE

ORS sections superseded: ORS 17.435, 17.605, 17.610, 17.615, 17.620, 17.625, 17.630.

COMMENT

This rule is based upon existing ORS sections. Section C. is based on 17.435, but the language is modified to refer to a case tried without a jury rather than a suit in equity, and the last sentence is new. The last sentence of ORS 17.630 is not included and will remain as a statute as it relates to appellate procedure.

rule, whichever is earlier, mail a copy of the order and notice of the date of entry of the order or denial of the motion to each party who is not in default for failure to appear. The clerk also shall make a note in the docket of the mailing.

F. Motion for new trial after judgment notwithstanding the verdict. The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial pursuant to Rule 64 not later than 10 days after entry of the judgment notwithstanding the verdict.

BACKGROUND NOTE

ORS section superseded: 18.140 and 46.155

COMMENT

Rule 63 is based upon ORS 18.140. The reference to failure to state a cause of action in a pleading as a ground for judgment NOV was eliminated as unnecessary and inconsistent with the pleading rules. Section 63 F. is based upon Federal Rule 50 (c)(2).

RULE 64

NEW TRIALS

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B.(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion,

by which such party was prevented from having fair trial.

B.(2) Misconduct of the jury or prevailing party.

B.(3) Accident or surprise which ordinary prudence could not have guarded against.

B.(4) Newly discovered evidence, material for the party making the application, which such party could not with reasonable diligence have discovered and produced at the trial.

B.(5) Excessive damages, appearing to have been given under the influence of passion or prejudice.

B.⁵(6) Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

B.⁶(7) Error in law occurring at the trial and ~~objected~~^{excepted} to by the party making the application.

C. New trial in case tried without a jury. In an action or proceeding tried without a jury, a former judgment may be set aside and a new trial granted on motion of the party aggrieved on any grounds set forth in section B. of this rule where applicable. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

D. Specification of grounds of motion; when motion must be on affidavits. In all cases of motion for a new trial, the grounds thereof shall be plainly specified, and no cause of new trial not so stated shall be considered or regarded by the court.

When the motion is made for a cause mentioned in subsections (1) to (4) of section B. of this rule, it shall be upon affidavit, setting forth the facts upon which the motion is based. If the cause is newly discovered evidence, the affidavits of any witness or witnesses showing what their testimony will be, shall be produced, or good reasons shown for their nonproduction.

E. When counteraffidavits are allowed; former proceedings considered. If the motion is supported by affidavits, counteraffidavits may be offered by the adverse party. In the consideration of any motion for a new trial, reference may be had to any proceedings in the case, prior to the verdict or other decision sought to be set aside.

F. Time of motion; counteraffidavits; hearing and determination. A motion to set aside a judgment and for a new trial, with the affidavits, if any, in support thereof, shall be filed ~~within~~ ^{not later than} 10 days after the filing of the judgment sought to be set aside, or such further time as the court may allow. When the adverse party is entitled to oppose the motion by counteraffidavits, such party shall file the same within 10 days after the filing of the motion, or such further time as the court may allow. The motion shall be heard and determined by the court within 55 days from the time of the ^{Filing} ~~entry~~ of the judgment, and not thereafter, and if not so heard and determined within said time, the motion shall conclusively be deemed denied.

G. New trial on court's own motion; review. If a new trial is granted by the court on its own ^{initiative} ~~motion~~, the order shall

so state and shall be made within 30 days after the filing of the judgment. Such order shall contain a statement setting forth fully the grounds upon which the order was made, which statement shall be a part of the record in the case.

BACKGROUND NOTE

ORS sections superseded: ORS 17.435, 17.605, 17.610, 17.615, 17.620, 17.625, 17.630 , 46.155.

COMMENT

This rule is based upon existing ORS sections. Section 64 C. is based on 17.435, but the language is modified to refer to a case tried without a jury rather than a suit in equity, and the last sentence is new. The last sentence of ORS 17.630 is not included and will remain as a statute as it relates to appellate procedure.

~~Hospital~~

OTHER ORS SECTIONS AFFECTED

The Council will also promulgate and recommend changes in other rules and statutes appearing in sections of the Oregon Revised Statutes, to conform definitions, procedures and cross references to these new rules.

- 1. ~~Cont'd any students - p 7 Nov. 10 memo.~~ NO
- 2. ~~Local Courts - Oct 30 memo p 14.~~
- 3. Process sections = Oct 30 p 1 = A, B, C =
- 4. Submission - Nov 17 memo - level =
- 5. Summary reports = p-7 Nov 13 memo

Should there be some grace period
on return paid in the Rules

PROPOSED OREGON RULES OF CIVIL PROCEDURE

Tentative Draft

September 15, 1978

Final action on the adoption or modification of the proposed rules, numbered 1 to 64, will be taken by the Council on Court Procedures at a meeting on Saturday, December 2, 1978, at 9:30 a.m. in Judge Dale's Courtroom in the Multnomah County Courthouse, Portland, Oregon.

The Council solicits comments and suggestions relating to these proposed rules. Written comments may be sent to the Executive Director, University of Oregon, School of Law, Eugene, Oregon 97403. The Council will receive oral statements relating to the rules at a public hearing on Friday, November 3, 1978, commencing at 9:30 a.m. in the County Commissioners Meeting Room, (Room 602), Multnomah County Courthouse, Portland, Oregon.

Council Members:

Donald W. McEwen, Portland (Chairman)
Hon. William H. Dale, Portland (Vice Chairman)
James B. O'Hanlon, Portland (Treasurer)
Darst B. Atherly, Eugene
E. Richard Bodyfelt, Portland
Sidney A. Brockley, Oregon (ity
Hon. Anthony L. Casciato, Portland
Hon. John M. Copenhaver, Bend
Hon. Alan F. Davis, Portland
Hon. Ross B. Davis, Medford
James O. Garrett, Salem
Wendell E. Gronso, Burns
Hon. Lee Johnson, Salem
Garr M. King, Portland
Laird Kirkpatrick, Eugene
Harriet Meadow Krauss, Corvallis
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Gene C. Rose, Ontario
Randolph Slocum, Roseburg
Hon. Val D. Sloper, Salem
Hon. Wendell H. Tompkins, Albany
Hon. William W. Wells, Pendleton
Fred Merrill (Executive Director)

act 30 memo

new ~~10~~ memo.

new 13 memo

Willis ~~new~~ - new 16.

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