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RULE 62

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 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.

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D. Extending or lessening time. Prior to the expiration of the times provided in ~~sections~~ <sup>B</sup> (3) and <sup>C</sup> (4) of this <sup>Rule</sup> 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.

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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 <sup>63</sup> F. is based upon ORS 17.441, changed to refer to trial by the court rather than suit in equity.

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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 <sup>not later than</sup> ~~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~~ <sup>Filing</sup> 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, 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

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 or proceeding 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,



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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 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.

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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

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 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.

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, 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).

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COMMENT

ORCP 63 is based upon ORS 18.140. The reference to lack of jurisdiction and failure to state a cause of action in a pleading, as a ground for judgment notwithstanding the verdict, are eliminated as unnecessary and inconsistent with the pleading

rules. Section 63 F. is based upon Federal Rule 50(c)(2). ORS 46.155 and 46.160, referring to new trials and judgment notwithstanding the verdict in district court, have been superseded.