

*Cream
Walker / Ring 0
no = nonsuit*

RULE 60

MOTION FOR A DIRECTED VERDICT

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.

*Possible
Revision?*
PSB
Oct 30
memo

*Added
language*

BACKGROUND NOTE

ORS sections superseded: 18.230, 18.240, 18.250.

COMMENT

Rule 60 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 a jury 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.

Rule 60.

~~RULE 3~~ - EXCEPTIONS.

(A) Definition. An exception is an objection taken at the trial to a decision upon a matter of law.

(B) Necessity of Noting Exception. No party may assign as error the statement of issues submitted to the jury pursuant to Rule 59 C(2) (~~now ORS 17.320~~), the giving or the failure to give an instruction unless he excepts thereto before the jury retires to consider the verdict, stating distinctly the matter to which he excepts and the grounds of the exception. Opportunity shall be given to take the exception out of the hearing of the jury.

(C) Notation of Exception. Any point of exception of which a notation is required by Section B of this Rule ~~ORS 17.510~~ shall be particularly stated, and shall be delivered, in writing, to the judge, ~~or entered in his minutes,~~ or taken down by an official reporter, or by any pro tem reporter at the time it is made, and at the time or afterwards, be corrected until made conformable to the truth.

(D) Proceedings where statement is not agreed on.

If, at the time the exception is made, the truth of the statement thereof is not agreed upon between the counsel and the court, and the court refuses the exception, the counsel may verify his statement of the point of exception by his own oath and that of two respectable and

disinterested persons, or by his own oath and that of the reporter who took the same down, and file the same as an exception to the ruling objected to. Such statement must be filed within 10 days of the time that the objection is made. Within 10 days thereafter the adverse

102 party may file a statement of objection as prepared or approved by the court, together with the affidavits of not more than three respectable and disinterested persons, or the affidavits of himself and the reporter who took the same down, concerning the truth or falsity of the statement of the exception as filed by the counsel, and prepared or approved by the court. The court must allow the counsel a reasonable time to procure the verification of his statement as required in this subsection; and all affidavits shall be taken by the clerk of the court, who must certify thereon, if he is satisfied of the fact that the person is respectable and disinterested.

Rule 66

Background note

ons sections suspended.

17.505, 17.510, 17.515.

Comment.

This rule is based upon the existing
ons sections:

RULE 60
EXCEPTIONS

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COMMENT

Rule 60 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 a jury 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.

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COMMENT

Rule 60 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 a jury case, if a judge feels that a plaintiff should be given a chance to refile when the evidence presented by the plaintiff is insufficient, the trial judge can grant a judgment of dismissal without prejudice under Rule 54 instead of directing a verdict. ORS 18.240 was eliminated.

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COMMENT

Rule 60 is based upon Federal Rule 50(a) and replaces ORS 18.230 through 18.250. These rules eliminate the device of non-suit 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 non-suit practice is that a directed verdict at the close of the plaintiff's case would be a dismissal with prejudice, whereas the non-suit was not. For a dismissal at the close of the plaintiff's case in a non-jury case under ORCP 54, the judge may direct that dismissal be without prejudice. In a jury case, if a judge feels that

a plaintiff should be given a chance to refile when the evidence presented by the plaintiff is insufficient, the judge can grant a judgment of dismissal without prejudice under ORCP 54, instead of directing a verdict. ORS 46.160, referring to non-suits and directed verdicts in district courts, is superseded.