

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

NEW TRIALS

RULE 64

* * * * *

F(1) Time of motion; counteraffidavits or counterdeclarations; hearing and determination. A motion to set aside a judgment and for a new trial, with the affidavits or declarations, if any, in support thereof, shall be filed not later than 10 days after the entry 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 or counterdeclarations, 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 entry of the judgment, and not thereafter, and if not so heard and determined within said time, the motion shall conclusively be deemed denied.

F(2) Effect of notice of appeal. A motion for new trial filed within the time limit prescribed in subsection (1) of this section may be filed notwithstanding that another party has filed notice of appeal in the case and the trial court may decide the motion notwithstanding that notice of appeal has been filed. If a party files a motion for new trial after notice of appeal has been filed, the moving party shall serve a copy of the motion on the appellate court. If the trial court decides the motion by order, the moving party shall file a copy of the order in the appellate court within seven days of the date of entry of the order. Any necessary modification of the appeal required by the order shall be pursuant to rule of the appellate court.

* * * * *

1 ORCP 63. Judgment notwithstanding the verdict

2 A Grounds. When a motion for a directed verdict, made at the close of all the evidence,
3 which should have been granted has been refused and a verdict is rendered against the applicant,
4 the court may, on motion, render a judgment notwithstanding the verdict, or set aside any
5 judgment which may have been entered and render another judgment, as the case may require.

6 B Reserving ruling on directed verdict motion. In any case where, in the opinion of the
7 court, a motion for a directed verdict ought to be granted, it may nevertheless, at the request of
8 the adverse party, submit the case to the jury with leave to the moving party to move for
9 judgment in such party's favor if the verdict is otherwise than as would have been directed or if
10 the jury cannot agree on a verdict.

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

19 D (1) Time for motion and ruling. A motion for judgment notwithstanding the verdict
20 shall be filed not later than 10 days after the entry of the judgment sought to be set aside, or such
21 further time as the court may allow. The motion shall be heard and determined by the court
22 within 55 days of the time of the entry of the judgment, and not thereafter, and if not so heard and
23 determined within said time, the motion shall conclusively be deemed denied.

24 (2) A motion for judgment notwithstanding the verdict filed within the time limit
25 prescribed in subsection (1) of this section may be filed notwithstanding that another party
26 has filed notice of appeal in the case and the trial court may decide the motion

1 notwithstanding that notice of appeal has been filed. If a party files a motion for judgment
2 notwithstanding the verdict after notice of appeal has been filed, the moving party shall
3 serve a copy of the motion on the appellate court. If the trial court decides the motion by
4 order, the moving party shall file a copy of the order in the appellate court within seven
5 days of the date of entry of the order. Any necessary modification of the appeal required
6 by the order shall be pursuant to rule of the appellate court.

7 E Duties of the clerk. The clerk shall, on the date an order made pursuant to this rule is
8 entered or on the date a motion is deemed denied pursuant to section D of this rule, whichever is
9 earlier, mail a notice of the date of entry of the order or denial of the motion to the attorney of
10 record, if any, of each party who is not in default for failure to appear. If a party who is not in
11 default for failure to appear does not have an attorney of record, such notice shall be mailed to
12 the party. The clerk also shall make a note in the register of the mailing.

13 ORCP 64. New trials

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

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

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

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

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

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

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

1 B(6) Error in law occurring at the trial and objected to or excepted to by the party making
2 the application.

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

9 D Specification of grounds of motion; when motion must be on affidavits or declarations.
10 In all cases of motion for a new trial, the grounds thereof shall be plainly specified, and no cause
11 of new trial not so stated shall be considered or regarded by the court. When the motion is made
12 for a cause mentioned in subsections (1) through (4) of section B of this rule, it shall be upon
13 affidavit or declaration setting forth the facts upon which the motion is based. If the cause is
14 newly discovered evidence, the affidavits or declarations of any witness or witnesses showing
15 what their testimony will be, shall be produced, or good reasons shown for their nonproduction.

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

21 F(1) Time of motion; counteraffidavits or counterdeclarations; hearing and determination.
22 A motion to set aside a judgment and for a new trial, with the affidavits or declarations, if any, in
23 support thereof, shall be filed not later than 10 days after the entry of the judgment sought to be
24 set aside, or such further time as the court may allow. When the adverse party is entitled to
25 oppose the motion by counteraffidavits or counterdeclarations, such party shall file the same
26 within 10 days after the filing of the motion, or such further time as the court may allow. The

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

4 (2) A motion for new trial filed within the time limit prescribed in subsection (1)
5 of this section may be filed notwithstanding that another party has filed notice of appeal in
6 the case and the trial court may decide the motion notwithstanding that notice of appeal
7 has been filed. If a party files a motion for new trial after notice of appeal has been filed,
8 the moving party shall serve a copy of the motion on the appellate court. If the trial court
9 decides the motion by order, the moving party shall file a copy of the order in the appellate
10 court within seven days of the date of entry of the order. Any necessary modification of
11 the appeal required by the order shall be pursuant to rule of the appellate court.

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

16
17
18
19
20
21
22
23
24
25
26

1 ORCP 63. Judgment notwithstanding the verdict

2 A Grounds. When a motion for a directed verdict, made at the close of all the evidence,
3 which should have been granted has been refused and a verdict is rendered against the applicant,
4 the court may, on motion, render a judgment notwithstanding the verdict, or set aside any
5 judgment which may have been entered and render another judgment, as the case may require.

6 B Reserving ruling on directed verdict motion. In any case where, in the opinion of the
7 court, a motion for a directed verdict ought to be granted, it may nevertheless, at the request of
8 the adverse party, submit the case to the jury with leave to the moving party to move for
9 judgment in such party's favor if the verdict is otherwise than as would have been directed or if
10 the jury cannot agree on a verdict.

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

19 D (1) Time for motion and ruling. A motion for judgment notwithstanding the verdict
20 shall be filed not later than 10 days after the entry of the judgment sought to be set aside, or such
21 further time as the court may allow. The motion shall be heard and determined by the court
22 within 55 days of the time of the entry of the judgment, and not thereafter, and if not so heard and
23 determined within said time, the motion shall conclusively be deemed denied.

24 **(2) A motion for judgment notwithstanding the verdict filed within the time limit**
25 **prescribed in subsection (1) of this section may be filed notwithstanding that another party**
26 **has filed notice of appeal in the case and the trial court may decide the motion**

1 notwithstanding that notice of appeal has been filed. If a party files a motion for judgment
2 notwithstanding the verdict after notice of appeal has been filed, the moving party shall
3 serve a copy of the motion on the appellate court. If the trial court decides the motion by
4 order, the moving party shall file a copy of the order in the appellate court within seven
5 days of the date of entry of the order. Any necessary modification of the appeal required
6 by the order shall be pursuant to rule of the appellate court.

7 E Duties of the clerk. The clerk shall, on the date an order made pursuant to this rule is
8 entered or on the date a motion is deemed denied pursuant to section D of this rule, whichever is
9 earlier, mail a notice of the date of entry of the order or denial of the motion to the attorney of
10 record, if any, of each party who is not in default for failure to appear. If a party who is not in
11 default for failure to appear does not have an attorney of record, such notice shall be mailed to
12 the party. The clerk also shall make a note in the register of the mailing.

13 ORCP 64. New trials

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

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

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

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

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

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

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

1 B(6) Error in law occurring at the trial and objected to or excepted to by the party making
2 the application.

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

9 D Specification of grounds of motion; when motion must be on affidavits or declarations.
10 In all cases of motion for a new trial, the grounds thereof shall be plainly specified, and no cause
11 of new trial not so stated shall be considered or regarded by the court. When the motion is made
12 for a cause mentioned in subsections (1) through (4) of section B of this rule, it shall be upon
13 affidavit or declaration setting forth the facts upon which the motion is based. If the cause is
14 newly discovered evidence, the affidavits or declarations of any witness or witnesses showing
15 what their testimony will be, shall be produced, or good reasons shown for their nonproduction.

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

21 F(1) Time of motion; counteraffidavits or counterdeclarations; hearing and determination.
22 A motion to set aside a judgment and for a new trial, with the affidavits or declarations, if any, in
23 support thereof, shall be filed not later than 10 days after the entry of the judgment sought to be
24 set aside, or such further time as the court may allow. When the adverse party is entitled to
25 oppose the motion by counteraffidavits or counterdeclarations, such party shall file the same
26 within 10 days after the filing of the motion, or such further time as the court may allow. The

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

4 **(2) A motion for new trial filed within the time limit prescribed in subsection (1)**
5 **of this section may be filed notwithstanding that another party has filed notice of appeal in**
6 **the case and the trial court may decide the motion notwithstanding that notice of appeal**
7 **has been filed. If a party files a motion for new trial after notice of appeal has been filed,**
8 **the moving party shall serve a copy of the motion on the appellate court. If the trial court**
9 **decides the motion by order, the moving party shall file a copy of the order in the appellate**
10 **court within seven days of the date of entry of the order. Any necessary modification of**
11 **the appeal required by the order shall be pursuant to rule of the appellate court.**

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