

AMENDMENTS

TO ORCP 60

promulgated by

COUNCIL ON COURT PROCEDURES

1980 to 2016

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. If a motion for directed verdict is made by the defendant, the court may, at its discretion, give a judgment of dismissal without prejudice under Rule 54 rather than direct a verdict.

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 ORS 46.160, referring to non-suits and directed verdicts in district courts, is superseded.

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COMMENT

The language in the last sentence was changed because the motion could be made by a plaintiff against a counterclaim, and the court might wish to dismiss the counterclaim without prejudice. See 54 C.