

AMENDMENTS

TO ORCP 63

promulgated by

COUNCIL ON COURT PROCEDURES

1980 to 2016

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 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 or if the jury cannot agree on a verdict.

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 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 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, 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 filing of the judgment notwithstanding the verdict.

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

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D. Time for motion and ruling. A motion for judgment notwithstanding the verdict shall be filed not later than 10 days after the [filing] entry 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 [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.

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 the attorney of record, if any, of each party who is not in default for failure to appear. If a party who is not in default for failure to appear does not have an attorney of record, such notice shall be mailed to the party. The clerk also shall make a note in the docket of the mailing.

COMMENT

Section 63 D. was changed to make "entry" the effective date for all purposes related to judgments. See Comment to ORCP 70.

Section 63 E. was changed to conform to the changed form of notice of entry of judgment in 70 B.(1).

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A. Grounds. When a motion for a directed verdict, made at the close of all the evidence, 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.

COMMENT

The rule will be amended to make it clear that the motion for directed verdict referred to in ORCP 63 A. is a motion made at the close of all the evidence, not one made at the close of the plaintiff's case-in-chief.

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D(1) Time for motion and ruling. A motion for judgment notwithstanding the verdict 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. 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.

D(2) Effect of notice of appeal. A motion for judgment notwithstanding the verdict 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 judgment notwithstanding the verdict 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.

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