

AMENDMENTS

TO ORCP 64

promulgated by

COUNCIL ON COURT PROCEDURES

1980 to 2016

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 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, by which such party was prevented from having fair trial.

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

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

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

B.(5) Excessive damages, appearing to have been given under the influence of passion or prejudice.

B.(6) Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

B.(7) Error in law occurring at the trial and objected to or excepted to by the party making the application.

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

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

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

F. Time of motion; counteraffidavits; hearing and determination. A motion to set aside a judgment and for a new trial, with the affidavits, if any, in support thereof, 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. When the adverse party is entitled to oppose the motion by counteraffidavits, 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 filing of the judgment, and not thereafter, and if not so heard and determined within said time, the motion shall conclusively be deemed denied.

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

COMMENT

This rule is based upon existing ORS sections. Section 64 A. is based on ORS 17.605. Section 64 B. is based on ORS 17.610. Section 64 C. is based on 17.435, but the language is modified to refer to a case tried without a jury rather than a suit in equity, and the last sentence is new. Sections 64 D. and E. are based on ORS 17.620 and 17.625. Section 64 F. is based on ORS 17.615. Section 64 G. is based on ORS 17.630. The last sentence of

ORS 17.630 is not included and will remain as a statute as it relates to appellate procedure.

Subsections 64 B.(5) and (6) were retained in the language of ORS 17.610, although they have been severely limited by Article VII, Section 3, of the Oregon Constitution. Van Lom v. Schneiderman, 187 Or 89 (1949); Bean v. Hostettler, 182 Or 510 (1948).

RULE 64

NEW TRIALS

F. Time of motion; counteraffidavits; hearing and determination. A motion to set aside a judgment and for a new trial, with the affidavits, if any, in support thereof, 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. When the adverse party is entitled to oppose the motion by counteraffidavits, 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 [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.

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

COMMENT

Sections 64 F. and G. were changed to make "entry" the effective date for all purposes related to judgments. See Comment to ORCP 70.

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.

* * * * *