Last reviewed and edited October 10, 2014
Includes amendments effective November 1, 2014

RULE 59. NEW TRIALS: AMENDMENT OF JUDGMENTS

(a) Grounds. The justice or judge before whom an action has been tried may on motion grant a new trial to all or any of the parties and on all or part of the issues for any of the reasons for which new trials have heretofore been granted in actions at law or in suits in equity in the courts of this state. A new trial shall not be granted solely on the ground that the damages are excessive until the prevailing party has first been given an opportunity to remit such portion thereof as the court judges to be excessive. A new trial shall not be granted solely on the ground that the damages are inadequate until the defendant has first been given an opportunity to accept an addition to the verdict of such amount as the court judges to be reasonable. On a motion for a new trial in an action tried without a jury, the justice or judge before whom the action has been tried 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.

(b) Time for Motion. A motion for a new trial shall be filed not later than 14 days after the entry of the judgment.

(c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party shall serve opposing affidavits within 24 days after the entry of judgment, which period may be extended for an additional period either by the justice or judge before whom the action has been tried for good cause shown or by the parties by written stipulation. Such justice or judge may permit reply affidavits.

(d) On Initiative of Court. Not later than 10 days after entry of judgment the justice or judge before whom the action has been tried without motion of a party may order a new trial for any reason for which the justice or judge might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case the court shall specify in the order the grounds therefor.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be filed not later than 14 days after entry of the judgment. A

motion for reconsideration of the judgment shall be treated as a motion to alter or amend the judgment.

(f) Unavailability of Transcript. When any material part of a transcript of the evidence taken cannot be obtained because of an official Court Reporter's death or disability, or because of a technical failure of an electronic transcription, the justice or judge before whom the action has been tried may on motion, if the justice or judge is satisfied that the lack of such transcript prevents a party from effectively prosecuting an appeal, set aside any judgment entered in the action and grant a new trial.

Advisory Note – October 2014

Rule 59(c) is amended to require service of affidavits in opposition to a motion for new trial within 24 days after the entry of judgment. The rule formerly required service of such affidavits within 10 days after service of the affidavits offered in support of the motion for new trial.

Advisory Note – June 2014

See Advisory Note – June 2014 to M.R. Civ. P. 52.

Advisory Committee's Notes
May 1, 2000

Rule 59 (e) is amended to add a new last sentence making clear that a motion to reconsider the judgment is a motion to alter or amend the judgment, thereby removing confusion as to whether the appeal period is suspended until the court can dispose of the motion. Motions to reconsider should not be filed under Rule 60. A corresponding amendment to Rule 7(b) discourages such motions and permits the court to dispose of motions to reconsider without waiting for opposition to be filed.

Subdivision (f) is revised to address unavailability of transcript whether the availability relates to problems with an official court reporter or the electronic recording division.

Advisory Committee's Note
November 1, 1969

The purpose of this amendment is to make it clear that in a case where one party has benefited from a jury verdict that is extravagantly high or inordinately low the trial judge has power to give that party the opportunity to agree to a figure deemed by the judge to be appropriate. The order for a new trial is thus to be conditioned upon the refusal of the advantaged party to agree to the new amount set by the judge. The amendment is derived from Mass.G.L. c. 231, § 127, as amended by Acts of 1967, c. 139.

The use of remittitur, the conditional reduction of an excessive verdict, is well established in Maine. *DeBlois v. Dunkling*, 145 Me. 197, 74 A.2d 221 (1950). The use of additur, the conditional increase of an inadequate verdict, is a different matter. A bare majority of the Supreme Court, in a much criticized decision, held that this device was not constitutionally permissible in a federal court. *Dimick v. Schiedt,* 293 U.S. 474, 55 S.Ct. 296, 79 L.Ed. 603 (1935). This is not a binding precedent on the question of the use of additur under the Maine Constitution. The Law Court has arguably approved it in *Roy v. Huard*, 157 Me. 477, 174 A.2d 41 (1961), when it ordered a new trial on the plaintiff's appeal from a jury verdict and judgment unless the defendant should consent within 30 days to entry of a judgment for a specified higher amount. This was, however, a case in which the higher amount was the only legally possible one, but the plaintiff had not filed a motion for judgment notwithstanding the verdict. In the absence of such a motion the court expressed itself as reluctant to order that judgment and resorted to the conditional order for a new trial instead. This does not necessarily amount to an endorsement of the use of additur by a trial judge in a case involving unliquidated damages. On principle, however, the device seems as fair and desirable as remittitur.

It is to be noted that the amended rule comes into play only when the size of the verdict is the sole ground for the grant of a new trial. If there is other reason for a new trial, the amendment is by its terms inapplicable. Under present practice the court in a proper case may grant a new trial on damages only. Under the amendment a new trial solely on that issue may be granted, but only after the court has given the opportunity of additur or remittitur. Such a partial new trial is much more likely to be appropriate when the verdict is excessive than when it is inadequate because of likelihood in the latter case of compromise on the issue of liability. *Domenico v. Kaherl*, 160 Me. 182, 187, 200 A.2d 844, 846 (1964). When the verdict is so low as to satisfy the court that the jury acted improperly by

compromising on the issue of liability, the inadequacy of damages is not the sole ground for a new trial and the amendment does not apply.

Explanation of Amendments
(Sept. 18, 1961; Nov. 1, 1966)

Rule 59(d)

The amendment of Rule 59(d) was taken from a 1966 amendment to F.R. 59(d). Its purpose is to override some restrictive decisions to the effect that the trial court is without power to grant a motion for a new trial, timely served, by an order more than 10 days after entry of judgment, based upon a ground not stated in the motion. In giving the court this power, provision was made for the parties to have an opportunity for hearing.

Rule 59(f)

Simultaneously with the effective date (September 18, 1961) of an amendment of the statute (R.S.1954, c. 113, § 191, now 4 M.R.S.A. § 654) relating to death of the court reporter in a criminal case, the Supreme Judicial Court added Rule 59(f) relating to the same subject matter in civil actions. The Court's obvious purpose was to put beyond any doubt the power of the trial court to give relief where the lack of a transcript prevents a party from effectively prosecuting an appeal. Compare Rule 63 relating to the death or disability of the trial judge.

R.S.1954, c. 113, § 191, prior to the 1961 amendment, applied by its terms to "any cause", including probably criminal[a] as well as civil cases, and apparently was originally enacted in reaction to The Stenographer Cases.[b] See 1913 Laws, c. 103, § 2. As to civil actions the statutory provision was swept up into Rule 60(b), whose broad ground (6) for relief from a judgment—"any other reason justifying relief from the operation of the judgment"—encompasses lack of a transcript because of death or disability of the court reporter. Nonetheless, that specific ground for relief occurred frequently enough to justify, it was believed, expressly

---

[a] *Cheney v. Richards, 130 Me*. 288, 291, 155 A. 642, 644 (1931), quotes with approval the statement in *Blyew v. U.S.,* 80 U.S. (13 Wall) 581, 20 L.Ed. 638 (1871) that: "Any question, civil or criminal, contested before a court of justice, is a cause or case." Query whether the statutory phrase "any cause, in law or equity" was more limited than "any cause" standing alone.

[b] 100 Me. 271, 61 A. 782 (1905).

providing for it in Rule 59(f), added by amendment. The Federal Rules have no counterpart to the express provision of Rule 59(f).

The 10-day period prescribed in Rule 59(b) for filing other motions for new trial is obviously inapplicable. That is necessarily so since the death or disability of the Official Court Reporter may come later than 10 days after the judgment and yet within the period for filing a notice of appeal or for filing the record on appeal. Rule 60(b) (6) has no time limitation other than "a reasonable time", and the only time limitation upon moving for a new trial under Rule 59(f) is the requirement that "the lack of such transcript pre-vents] a party from effectively prosecuting an appeal." If the moving party has failed to file a notice of appeal within the time prescribed in Rule 73(a), the lack of a transcript thereafter will *not* be the factor preventing him from prosecuting his appeal.

There are also other instances where the lack of a transcript would not prevent effective prosecution of an appeal, as, for example, where the appeal would involve only questions of pretrial order, etc. Likewise Rules 74(n) and (r) (formerly Rule 75(m) and Rule 76) provide methods by which a record on appeal may be prepared despite the lack of a transcript. The winning party below should not be put to the expense and delay of a new trial unless the would-be appellant attempts to follow those methods and fails, or can show that such attempt would be unavailing.

The extent to which the trial judge in exercising his discretion under Rule 59(f) may take into account his estimate of the futility of the attempted appeal is unsettled. The trial judge would seem to have some discretion in civil cases in view of the use of the word "may" and the phrase "if he is satisfied"—to be contrasted with the simultaneous statutory amendment applicable to criminal cases (4 M.R.S.A. § 654) using the word "shall" and the phrase "if it is evident". Arguably, the death or disability of the reporter should not give the windfall of a new trial to a losing party who otherwise would not have appealed or have had any chance whatever of success on appeal. On the other hand, the trial judge should lean over backwards to grant the relief under Rule 59(f)—assuming that the moving party is otherwise entitled to it—because exercise of his discretion in this area, even though theoretically reviewable for abuse,[c] is for practical purposes beyond effective supervision by the Law Court.

---

[c] Cf. Tozer v. Charles A. Krause Mill. Co., 180 F.2d 242 (3d Cir. 1951) (denial of motion under F.R. 60(b) reversed for abuse of discretion).

Some questions of the coverage of Rule 59(f) may be discussed. If another court reporter can transcribe the stenographic notes of the deceased or disabled court reporter, a new trial under Rule 59(f) is not available. If the court reporter's stenographic notes are lost or destroyed prior to transcription, Rule 59(f) does seem to apply since the transcript cannot be obtained because of the reporter's disability to produce such transcript. This interpretation is bolstered by the availability also of Rule 60(b) (6) under which the same result may be achieved.[d]

Reporter's Notes
December 1, 1959

This rule is substantially the same as Federal Rule 59. New trials may be granted for any of the reasons for which they have been granted in Maine in the past. The possibility of a new trial on part of the issues only is in accord with existing law. *Moreland v. Vomilas,* 127 Me. 493, 144 A. 652 (1929).

The important change from present practice is the requirement that all motions for a new trial be addressed to the trial judge. In Maine today a party contending that the verdict is against the law or the evidence may either seek a new trial from the trial judge or go directly to the Law Court on a report of the whole case. Furthermore, unsuccessful resort to the trial judge does not preclude another motion addressed to the Law Court. R.S.1954, Chap. 113, Sec. 59 (repealed in 1959). The rule contemplates that the Law Court would consider the question de novo on appeal from the judgment, unaffected by the action of the trial judge.

It is believed that the rule is an improvement over present practice. From the point of view of the moving party, he would be forced to make his motion first to the trial judge, whom he can now ignore, but he would not lose the right he now has for the Law Court to pass upon it. His only loss would appear to be the time spent, in arguing the motion and the slight delay in getting to the Law Court. Moreover, if he is successful with the trial judge, he saves the time and expense of a trip to the Law Court. From the point of view of the opposing party, he must defend his verdict twice instead of once, but under present practice he can be forced to do the same thing at the plaintiff's option.

---

[d] On the general subject matter of Rule 59(f), see Annot., "Death or disability of court reporter . . . as ground for new trial or reversal," 19 AL.R.2d 1098 (1951).

The rule also requires the trial judge to pass initially upon a motion for new trial on any alleged cause not shown by the evidence presented at the trial, such as a motion based upon newly discovered evidence. At present such a motion is addressed to the Superior Court, which takes the evidence in support of the motion and in opposition thereto, at which point the case is marked "Law" and goes to the Law Court without decision by the trial court. R.S.1954, Chap. 113, Sec. 59 (repealed in 1959). New trials on the ground of newly discovered evidence are not and should not be lightly granted, and the present requirement puts a burden of expense upon the moving party which undoubtedly operates as an effective deterrent, since he must pay for the report of the testimony at the trial and of the new evidence. On the other hand, the rare cases where such a motion is granted are likely to be pretty flagrant ones, like *White v. Andrews*, 119 Me. 414, 111 A. 581 (1920), where any justice of either court would probably come to the quick conclusion that a new trial is called for. In such a situation the moving party ought not to be burdened by the expense and delay inherent in the present method.

Rule 59 (b) provides a time limit of 10 days after judgment, and the time cannot be enlarged. Rule 6(b). At present a motion to set aside the verdict as against the law or the evidence must be filed at the same term of court on which the verdict is returned but never more than 30 days after verdict. R.S.1954, Chap. 113, Sec. 60 (repealed in 1959), Revised Rules of Court 17. By these rules terms of court no longer determine the time limit for action under the rules. See Note to Rule 6.

A motion for a new trial or a motion to alter or amend a judgment under Rule 59(e) suspends the running of the time for appeal, and the full time for appeal runs afresh after disposition of the motion. Rule 73(a).