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Briefly: A user's guide for post-trial motions

By: Eric J. Magnuson and Caroline Moos | January 18, 2022

You just finished a long and hard-fought trial. It did not come out well for your client. The judge made several rulings that you think were wrong, prejudicing your case. And the lawyer on the other side engaged in some questionable trial tactics. To top it all off, you are convinced that even when all the evidence is considered, the other side did not prove its case.

What do you do next? You bring post-trial motions, one of the most challenging parts of trial and appeal work. You get to repeat all the arguments that the judge has already heard and rejected, and on top of it, tell the judge that she was wrong every step of the way. Not an attractive prospect. But it is imperative in many instances if you want to have a chance to win on appeal.

Post-trial motions can make or break an appeal in both state and federal court. But the impact of bringing or not bringing differs greatly across jurisdictions, and the timing and procedures vary. This user guide is intended to provide a roadmap for attorneys preparing for post-trial motion practice.

Judgment notwithstanding the verdict

A motion for judgment notwithstanding the verdict (or judgment as a matter of law "JMOL") is appropriate when a reasonable jury would have no evidentiary basis to find for the other party. A good example is when the plaintiff fails to prove an essential element of his or her case. *See Obst v. Microtron, Inc.*, 614 N.W.2d 196, 203 (Minn. 2000). The motion usually focuses on missing evidence for a prima facie case, although in rare cases it can be granted when the evidence is overwhelmingly against the verdict.

In Minnesota state court, there is no requirement that Rule 50 motions be made at trial to preserve the issues for appeal. But while a failure to file a post-verdict JMOL motion may not preclude appellate review of the sufficiency of the evidence in state court, the motion can be valuable in framing the issue of sufficiency on appeal. *See Minnesota Practice: Appellate Rules Annotated* § 103.19.

Federal courts have a two-step procedure under Federal Rule of Civil Procedure 50(a) and 50(b) for JMOL motions. First, you have to bring a Rule 50(a) motion at the close of your opponent's evidence, or at the close of evidence and before the case is submitted to the jury. A Rule 50(a) motion must specify the judgment sought and the facts and law that support your claim that you are entitled to such a judgment.



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After the verdict, it is necessary to renew the JMOL with a Rule 50(b) motion. This motion has the same content as the first motion. But renewal is critical, because when the judge denies, or declines to rule on the earlier trial motion, the court is deemed to have withheld determination of the legal issues until it rules on the renewed motion.

Failure to bring a Rule 50(a) motion before submission of a case to a jury will preclude bringing a Rule 50(b) motion after a jury enters its judgment. And failure to bring both a Rule 50(a) motion later followed by a Rule 50(b) motion will preclude appellate review of the sufficiency of the evidence. See *Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394, 403-07 (2006).



New trial

Both state and federal courts have similar rules and procedures for new trial motions. However, the impact of bringing or not bringing those motions differs dramatically.

In Minnesota state court, a motion for a new trial is necessary to challenge the conduct of the trial — whether based on things the court or your opponent did. To preserve matters involving trial procedure, evidentiary rulings, objections to instructions, or other trial court rulings, a party must bring a motion for a new trial. *Appellate Rules Annotated* § 103.19(b). Without such a motion, the appellate court may only review whether the evidence supports the findings of fact and the findings support the conclusions of law and the judgment. There are some exceptions to this general rule, but practitioners should not count on raising any issue relating to the procedure of a trial without having brought a new trial motion.

In federal court, a new trial motion does not have the same mandatory character, but it is still a good idea. Under Federal Rule of Civil Procedure 59, a party need not bring a motion for new trial to preserve issues with respect to trial procedure or evidentiary rulings, but must object on the record at trial or make an offer of proof to preserve evidentiary issue for appeal. See Fed. R. Evid. 103(a). While a motion for new trial may not be necessary for review of certain issues, it serves as a good safety net. This motion may be granted “for any reason for which a new trial has heretofore been granted in an action at law.” Fed. R. Civ. P. 59(a)(1).

Amended findings

When a case has been tried to the court, it is common practice to bring a motion for amended findings and conclusions combined with a motion for a new trial before appealing.

Minnesota Rule of Civil Procedure 52.02 permits a party to request a court to clarify, correct, or amend findings, conclusions, and orders for judgment and allows the court to make such amendments. For the most part, this motion is the equivalent of telling the district court that it got the facts wrong. But this mechanism is not intended to permit a wholesale retrial of the case.

In state court, motions for amended findings are not generally necessary to preserve issues for appeal with one notable exception — if the court fails to make a finding on a particular issue of fact, a motion for amended findings is necessary to preserve that issue for appeal. The purpose and grounds for motion for amended findings in federal court is identical to state court.

One often overlooked aspect of court trials is the need to move for a new trial if there are new trial issues to assert on appeal. See, e.g., *Hackett v. State, Dept of Nat. Res.*, 502 N.W.2d 425, 426 (Minn. Ct. App. 1993) (“A posttrial motion for a new trial pursuant to Minn. R. Civ. P. 59.01 raising individual errors allegedly occurring at trial is a prerequisite to review of those errors on appeal from a judgment.”). While it is extremely unlikely that the trial judge will change his or her mind, the same error preservation requirement exists whether the case has been tried to the court or to a jury.

Timing

Timing of post-trial motions is critical. Failure to bring the motions within the time prescribed by the rules is jurisdictional, and missing the deadline generally can't be fixed. In other words, if required post-trial motions are not timely made, they are ineffective — it is like they were never brought.

Notably, in Minnesota state court, the General Rules of Practice do not apply to post-trial motions, see Minn. R. Gen. Prac. 115.01(c), so it can be tricky to time these motions. Some have their own specific deadlines, as described below. When the rules do not give you a deadline, it may be wise for the parties to stipulate to a schedule and have the court approve it.

A motion for new trial in state court must be written, filed, and served within 30 days of service of notice of filing in the trial court findings of fact, conclusions of law, and an order for judgment. Minn. R. Civ. P. 59.03. There is no prescribed form for the notice of filing, but it must contain information sufficient to provide notice to the other parties that the time is running. See *First Minn. Bank v. Overby Develop., Inc.*, 783 N.W.2d 405, 409 (Minn. Ct. App. 2010) (holding that a party's letter “does not have sufficient specificity to provide a notice of filing under rule 104.01 and does not limit the time for appeal”). But notice from the court does not start the time for post-trial motions.

Still, waiting to the last minute is a bad idea. The service and filing deadline is absolute and jurisdictional, and cannot be extended by the court for any reason. And the motion must be heard within 60 days unless the court extends that deadline for good cause. *Rubey v. Vannett*, 714 N.W.2d 417, 422 (Minn. 2006).

Timing in federal court is different. If brought, JMOL motions must be filed no later than 28 days after the entry of judgment. Fed. R. Civ. P. 50(b). Unlike state court, this deadline runs without regard to service of notice of filing. Similarly, a new trial motion must be filed no later than 28 days after entry of judgment. Fed. R. Civ. P. 59(b), (d). And a motion for amended findings has the same 28-day deadline. Fed. R. Civ. P. 59(e), 52(b).

Not only does an untimely post-trial motion not preserve issues, it doesn't stop the clock on when an appeal has to be filed. In both state and federal court, the filing of certain timely and proper post-trial motions extends the time for appeal. In state court,

the appellate filing clock starts again when the last tolling motion is decided and notice of filing is served. Minn. R. App. P. 104.01, subd. 2. One thing to keep in mind is that if notice is not served, the time for appeal never starts to run in state court. See *Curtis v. Curtis*, 442 N.W.2d 173, 176 (Minn. Ct. App. 1989). In federal court, the clock starts when judgment is entered on the last tolling motion. Fed. R. App. P. 4(a)(4)(A). And in both courts, a proper and timely post-trial motion renders ineffective a previously filed notice of appeal. The overall goal of this rule is to get all issues before the appellate court at one time.

Final thoughts

Post-trial motions are an essential part of appellate practice. They shape and limit the issues that can be appealed, and drive the timing of the appeal. And post-trial deadlines are critical — a late filing can kill or significantly reduce the chances of a successful appeal.

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