

County Court New Trials; Amendment of Judgments - C.R.Civ.P. 359

(a) **No Motion for New Trial Necessary.** Motion for new trial shall not be a condition of appeal from the county to district court.

(b) **Time for Motion.** A motion for new trial (which must be in writing) may be made within fifteen days of entry of judgment and if so made the time for appeal shall be extended until fifteen days after disposition of the motion. Only matters raised in said motion shall be considered on appeal.

(c) **Grounds.** A new trial may be granted to all or any of the parties, and on all or a part of the issues, after trial by jury or by the court. On a motion for a new trial in an action tried without a jury, the court may upon the judgment, if one has been entered, take additional testimony and direct the entry of a new judgment. Subject to the provisions of Rule 361, a new trial may be granted for any of the following causes:

- (1) Any irregularity in the proceedings by which any party was prevented from having a fair trial.
- (2) Misconduct of the jury.
- (3) Accident or surprise, which ordinary prudence could not have guarded against.
- (4) Newly discovered evidence, material for the party making the application which he could not, with reasonable diligence, have discovered and produced at the trial.
- (5) Excessive or inadequate damages.
- (6) Insufficiency of the evidence.
- (7) Error in law.

When application is made under subsection 1, 2, 3, or 4 of section (c) of this Rule it shall be supported by affidavit filed with the motion. When application is made under any of the subsections (1) to (7) of section (c) of this Rule there shall be filed with the motion a short memorandum brief including authorities, if any, upon which the applicant relies in support of the motion.

(d) **Time for Filing and Serving Affidavits.** When a motion for a new trial is based upon affidavits they shall be filed with the motion. The opposing party has ten days after service thereof within which to file opposing affidavits, which period may be extended for an additional period not exceeding twenty days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(e) **On Initiative of Court.** Not later than fifteen days after entry of judgment, the court on its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party, and in the order shall specify the grounds therefor.

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

(g) **Effect of Granting Motion.** The granting of a motion for a new trial shall not be an appealable order, but a party by participating in the new trial shall not be deemed to have waived any objections to the granting of the motion, and the validity of the order granting the motion may be raised on appeal to the district court and in the petition in the Supreme Court for writ of certiorari.

Applied in *Bachman v. County Court*, 43 Colo. App. 175, 602 P.2d 899 (1979).