

NOTE: Subsections (a), (b), and (c) repeat verbatim Appellate Rule 33.1(a)(b)(c). SUGGESTION: Add a comment cross referencing Evidence Rule 103?

- (d) **Motion for New Trial Not Required.** A point in a motion for new trial is not a prerequisite to a complaint on appeal in either a jury or a nonjury case, except as provided in subdivision (b).

NOTE: This repeats verbatim current Rule 324(a).

- (e) **Motion for New Trial Required.** A point in a motion for new trial is a prerequisite to the following complaints on appeal:
- (1) A complaint on which evidence must be heard such as one of jury misconduct or newly discovered evidence or failure to set aside a judgment by default;
 - (2) A complaint of factual insufficiency of the evidence to support a jury finding;
 - (3) A complaint that a jury finding is against the overwhelming weight of the evidence;
 - (4) A complaint of inadequacy or excessiveness of the damages found by the jury; or
 - (5) Incurable jury argument if not otherwise ruled on by the trial court.

NOTE: This repeats verbatim current Rule 324 (b).

- (f) **Sufficiency of Evidence Complaints in Nonjury Cases.** In a nonjury case, a complaint regarding the legal or factual insufficiency of the evidence—including a complaint that the damages found by the court are excessive or inadequate, as distinguished from a complaint that the trial court erred in refusing to amend a fact finding or to make an additional finding of fact—may be made for the first time on appeal in the complaining party's brief.