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Chapter 1

Courts and Judicial Officers Generally

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COURTS

1.010 Powers of courts in administration of court business and proceedings. Every court of justice has power:

(1) To preserve and enforce order in its immediate presence.

(2) To enforce order in the proceedings before it, or before a person or body empowered to conduct a judicial investigation under its authority.

(3) To provide for the orderly conduct of proceedings before it or its officers.

(4) To compel obedience to its judgments, decrees, orders and process, and to the orders of a judge out of court, in an action, suit or proceeding pending therein.

(5) To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto.

(6) To compel the attendance of persons to testify in an action, suit or proceeding pending therein, in the cases and manner provided by statute.

(7) To administer oaths in an action, suit or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers or the performance of its duties.

1.020 Contempt, punishment for. For the effectual exercise of the powers specified in ORS 1.010, the court may punish for contempt in the cases and the manner provided by statute.

1.030 Seal, what courts have; form; custody; affixing. (1) Each of the following courts, and no other, has a seal:

(a) The Supreme Court.

(b) Each circuit court.

(c) Each county court.

(2) The seals shall have the arms of the state engraved in the center, with the following inscription surrounding the same:

(a) For the Supreme Court, "Supreme Court, State of Oregon."

(b) For the circuit court, "Circuit Court, — County, State of Oregon," inserting the name of the particular county.

(c) For the county court, "County Court, — County, State of Oregon," inserting the name of the particular county.

(3) The clerk of the court shall keep the seal, and affix it to any process, transcript, certificate or other paper required by statute.

1.040 Sittings of court to be public; when may be private. The sittings of every court of justice are public, except that upon the agreement of the parties to a civil action, suit or proceeding, filed with the clerk or entered upon the journal, the court may direct the trial, or any other proceeding therein, to be private; upon such order being made, all persons shall be excluded, except the officers of the court, the parties, their witnesses and counsel.

1.050 Time for decision on submitted questions; certificate of compliance with requirement; penalty for false certificate. Any question submitted to any judge of any court of, or any justice of the peace in, any of the courts of this state, excepting the Supreme Court and the justices thereof, must be decided and the decision rendered within three months after submission, unless prevented by sickness or unavoidable casualty, or the time be extended by stipulation in writing signed by the counsel for the respective parties and filed with the judge before the expiration of said three months. This section is mandatory, and no officer shall sign or issue any warrant for the payment of the salary or any instalment of the salary of any such judge or justice of the peace unless the voucher for such warrant shall contain or be accompanied by a certificate of such judge or justice of the peace that all matters submitted to him for decision three months or more prior to the filing of said voucher have been decided as required herein; and, in case the time has been extended by stipulation in writing, or a decision has been prevented by sickness or unavoidable casualty, said certificate shall state the facts excusing the delay. The making and filing of a false certificate shall be just cause for complaint to the legislature and removal of said judge or justice of the peace.

1.060 Days for transaction of judicial business; business on holidays. The courts of justice may be held and judicial business transacted on any day, except that no court can be opened nor can any judicial business be transacted on any legal holiday in this state for any purpose other than:

(1) To give instructions to a jury then deliberating upon its verdict;

(2) To receive the verdict of a jury, or to discharge a jury in case of its inability to agree upon a verdict; or

(3) For the exercise of the powers of a

magistrate in criminal actions or proceedings of a criminal nature.

1.070 When court deemed appointed for next judicial day. If a day appointed for holding a court, or to which it is adjourned, is a legal holiday, the court is deemed appointed for or adjourned to the next judicial day.

1.080 Place of holding court. Every court of justice shall sit at the place designated by law for that purpose, except as provided in ORS 1.090 and 1.100.

1.090 Trial elsewhere than at courthouse on agreement of parties. Upon agreement of the parties to a civil action, suit or proceeding, filed with the clerk or entered upon the journal, the court may direct that the trial or any other proceeding therein, be had elsewhere within the county than at the courthouse.

1.100 Place of holding court in case of calamity or danger. (1) A judge authorized to hold or preside at a court may, by an order filed with the clerk, and published as he may prescribe, direct that the court be held or continued at any other place in the county than that appointed, when war, pestilence or other public calamity, or the danger thereof, may render it necessary; and may, in the same manner, revoke the order, and in his discretion appoint another place in the county for holding the court.

(2) When a court is held at a place appointed as provided by this section, every person held or required to appear at the court shall appear at the place so appointed.

1.110 Adjournment or postponement when judge does not attend. If no judge attend on the day appointed for holding a court, before 4 p.m., the court shall stand adjourned until the next day at 9 a.m.; and if no judge attend on that day, before 4 p.m., it shall stand adjourned for the term; however, in case a judge is unable to attend at the time provided by law for a regular term of court, or at the time specified for a special term, the judge may by an order made and signed anywhere in his district postpone such regular or special term until some future time.

1.120 Proceeding unaffected by vacancy in office or failure of term. No action, suit or proceeding pending in a court of justice is affected by a vacancy in the office of any or all of the judges, or by the failure of a term thereof.

1.130 Power to adjourn proceedings. A court or judicial officer has power to adjourn any proceedings before it or him, from time to time, as may be necessary, unless otherwise expressly provided by statute.

1.140 Manner of addressing application or proceeding to court or judge. An application or other proceeding addressed to a court shall be addressed to it by its style as given by statute; an application or other proceeding addressed to a judicial officer shall be addressed to him by his name, without any other title than his style of office.

1.150 Proceedings to be in English; use of abbreviations. Every writing in any action, suit or proceeding in a court of justice of this state, or before a judicial officer, shall be in English; but common abbreviations may be used.

1.160 Means to carry jurisdiction into effect; adoption of suitable process or mode of proceeding. When jurisdiction is, by the constitution or by statute, conferred on a court or judicial officer, all the means to carry it into effect are also given; and in the exercise of the jurisdiction, if the course of proceeding is not specifically pointed out by the procedural statutes, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of the procedural statutes.

1.170 Order for accommodation or supplies for court or jury; expense as county charge. If the proper authority neglects to provide any court with rooms, furniture, fuel, lights and stationery, suitable and sufficient for the transaction of its business, and for any jury attending upon it, the court may order the sheriff to do so, at the place within the county designated by law for holding such court; and the expense incurred by the sheriff in carrying such order into effect, when ascertained and ordered to be paid by the court, is a charge upon the county.

1.180 to 1.200 [Reserved for expansion]

JUDICIAL OFFICERS GENERALLY

1.210 Judicial officer defined. A judicial officer is a person authorized to act as a judge in a court of justice.

1.220 Judicial officer or partner thereof acting as attorney. Any judicial officer may act as an attorney in any action, suit or pro-

ceeding to which he is a party or in which he is directly interested. A judge of the county court or justice of the peace, otherwise authorized by law, may act as an attorney in any court other than the one of which he is judge, except in an action, suit or proceeding removed therefrom to another court for review, but no judicial officer shall, as attorney, institute or cause to be instituted any suit, action or proceeding, or act as attorney in any suit, action or proceeding with or without hire, in any court or otherwise, other than as in this section allowed. No judicial officer shall have a partner who shall practice law or act as attorney in the court over which he presides.

1.230 Powers of a judge out of court. A judge may exercise, out of court, all the powers expressly conferred upon a judge as distinguished from a court, and not otherwise.

1.240 Powers of judicial officers. Every judicial officer has power:

(1) To preserve and enforce order in his immediate presence, and in the proceedings before him, when he is performing a duty imposed upon him by statute.

(2) To compel obedience to his lawful orders, as provided by statute.

(3) To compel the attendance of persons to testify in a proceeding pending before him in the cases and manner provided by statute.

(4) To administer oaths in a proceeding pending before him, and in all other cases where it may be necessary, in the exercise of his powers and the performance of his duties.

1.250 Contempt, punishment for. For the effectual exercise of the powers specified in ORS 1.240, a judicial officer may punish for contempt, in the cases and manner provided by statute.

1.260 Powers of judges of Supreme Court and circuit courts; where may be exercised. The judges of the Supreme Court and circuit courts have power in any part of the state:

(1) To take and certify:

(a) The proof and acknowledgment of a conveyance of real property, or any other written instrument authorized or required to be proved or acknowledged.

(b) The acknowledgment of satisfaction of a judgment in any court.

(c) An affidavit or deposition to be used

in any court of justice or other tribunal of this state.

(2) To exercise any other power and perform any other duty conferred or imposed upon them by statute.

1.270 Powers of other judicial officers; where may be exercised. Every other judicial officer may, within the county, city, district or precinct in which he is chosen:

(1) Exercise the powers mentioned in subsection (1) of ORS 1.260.

(2) Exercise any other power and perform any other duty conferred or imposed upon him by statute.

1.280 to 1.300 [Reserved for expansion]

RETIREMENT OF JUDGES

1.310 Involuntary retirement of judges for incapacity. The Governor, when requested to do so by resolution of the governors of the Oregon State Bar, shall appoint a board of three physicians licensed to practice in Oregon, to examine any judge of the supreme or circuit court for the purpose of determining whether he is permanently incapacitated to perform the duties of his office. The judge shall submit to examination within 20 days of receipt by him of written notice from the Governor. The board shall promptly examine the judge and make a written report of their findings to the Governor. If a majority of the board file a written report that the judge is permanently incapacitated physically or mentally to perform the duties of his office, then the Governor shall have power, if he approves the report, to remove the judge from office and declare the office vacant. If the judge refuses to submit to examination within the time hereinbefore specified the Governor shall declare the office vacant. Any judge retired by the Governor under the provisions of this section, who is eligible for retirement pay under the other provisions of ORS 1.320 to 1.380, shall be entitled to such retirement pay as though he had retired voluntarily.

1.320 Voluntary retirement based on age and period of service. Any judge of the supreme or circuit court who heretofore or hereafter shall have served as a judge of either or both of such courts for 16 years in the aggregate and shall have attained the age of 65 years or more, or who shall have served 12 years in the aggregate and shall have attained the age of 70 years or more, or who

shall have served 18 years in the aggregate and shall have attained the age of 60 years or more and who hereafter shall have been defeated for reelection may, during or at the expiration of his term of office, retire and receive the retirement pay provided for in ORS 1.340. In the computation of service the time served by a judge on the circuit court shall be added to the time served by him, if any, on the Supreme Court, and vice versa. Any judge desiring to retire under the provisions of this section shall file a notice of his desire with a sworn statement, setting forth facts establishing his eligibility to retire hereunder, with the Governor, and the Governor shall declare said office vacant.

1.330 Voluntary retirement for incapacity. Any judge of the supreme or circuit court who has served as a judge of either or both of such courts for not less than six consecutive years, and who believes he has become permanently incapacitated physically or mentally to perform the duties of his office, may file with the Governor a written application for retirement with a sworn statement of his tenure and of his incapacity. The Governor thereupon shall appoint three physicians licensed to practice in Oregon, who promptly shall examine the applicant and report their findings in writing to the Governor. If a majority of such physicians file a written report that in their opinion the judge has become permanently incapacitated physically or mentally to perform the duties of his office, and if the Governor approves the report, he shall file the report, with his approval indorsed thereon, with the Secretary of State, and, from the date of such filing, the applicant shall be retired from office and shall be entitled to the benefits of ORS 1.340 to the same extent as if he had retired under the provisions of ORS 1.320.

1.340 Retirement pay; widow's pension; administrative expenses. (1) Every judge of the supreme or circuit court who has heretofore retired or may hereafter retire and who is qualified under ORS 1.310 to 1.330 for retirement pay shall be entitled to receive monthly during the period of his natural life out of the Judges' Retirement Fund, an amount equal to one-half of the monthly salary he was receiving as a judge at the time of his retirement, to be paid to all such judges by warrant of the Secretary of State following the end of each month on or before the tenth day of the month following.

(2) The widow of any judge of the

supreme or circuit court who has heretofore retired or may hereafter retire, or of any such judge who was heretofore or may hereafter be eligible for retirement at the date of his death, shall receive a monthly pension equal to one-half of the monthly retirement pay received by her husband under the provisions of this section, or, as the case may be, one-half of the monthly retirement pay which would have been payable to her husband had he retired on the first day of the second month preceding the date of his death. The widow's pension shall be paid to her monthly by warrant of the Secretary of State drawn on the Judges' Retirement Fund. The first payment shall be made between the first and tenth days of the month following the date of death of her husband and a like monthly payment shall be paid to her on or before the tenth day of each month thereafter so long as she lives and remains unmarried. Each monthly payment shall be reduced by an amount equal to the aggregate payments received by her during the preceding month pursuant to state or federal law providing for social security, old age assistance or other grant in aid.

(3) The expense of medical examinations, as provided in ORS 1.310 and 1.330, and other administrative expenses shall be paid out of the Judges' Retirement Fund. [Amended by 1953 c.529 §5]

1.350 Judges' Retirement Fund; sources; handling. There hereby is created a "Judges' Retirement Fund," which shall consist of the moneys appropriated from the General Fund in the State Treasury by section 1, chapter 294, Oregon Laws 1943, and by ORS 1.360, the deductions from salaries of judges as provided in ORS 1.360, all gifts and donations to said fund, and the rents, issues and profits thereof or proceeds of sales of assets thereof. The State Treasurer shall be the custodian of said fund and shall make disbursements therefrom upon warrants drawn by the Secretary of State as provided in ORS 1.340 and in this section. The treasurer shall keep written permanent records showing all receipts and disbursements of the fund and shall annually file a copy thereof with the Governor. The treasurer shall receive no compensation for his services hereunder other than his salary as State Treasurer. He shall keep the assets of said fund separate from his other funds and may invest any

part thereof in the same manner as other state funds.

1.360 Salary deductions and state appropriations for retirement fund. For the purpose of providing moneys in the Judges' Retirement Fund, five percent shall be deducted by the Secretary of State from the monthly salary received from the state by each judge of the Supreme Court and each judge of the circuit court and paid into said fund by the Secretary of State, and a sum equal to three percent of the combined salaries of the judges of the Supreme Court and the judges of the circuit court shall be drawn from the General Fund of the State Treasury and paid monthly into said Judges' Retirement Fund, which latter sum hereby is appropriated out of money in the General Fund not otherwise appropriated; provided, that whenever there is insufficient money in said fund to meet the retirement payments, the additional amount necessary shall be withdrawn from the General Fund and placed in said Judges' Retirement Fund. The deductions and withdrawals shall be made on or before the tenth day of each month. Upon the death of any judge either during his term of office or after his retirement, all his rights in such fund shall terminate and no right or interest therein shall pass to his estate; and no right or interest in the fund of any widow entitled to a pension as provided in ORS 1.340 shall survive her death or remarriage. [Amended by 1953 c.529 §5]

1.370 Repayment of initial appropriation. If at any time the State Treasurer shall

determine that the moneys in the Judges' Retirement Fund are sufficient so that the appropriation made by section 9, chapter 294, Oregon Laws 1943, can be returned to the General Fund and that the moneys remaining in said fund are ample to assure prompt and continuous payment of the full amount to which judges shall be entitled under ORS 1.310 to 1.380, then there shall be repaid from said Judges' Retirement Fund into the General Fund in the State Treasury the sum of \$10,000.

1.380 Application to judges in office in 1943. (1) ORS 1.310 to 1.370 do not apply to any judge with respect to any unexpired term to which he was elected or appointed prior to June 9, 1943, unless such judge, within 60 days after June 9, 1943, filed with the Secretary of State a written notice and declaration that he desired to take advantage of chapter 294, Oregon Laws 1943, and consented that three percent of his salary might thereafter be deducted and paid into the Judges' Retirement Fund, but ORS 1.310 to 1.370 do apply to all judges of said courts for all terms to which such judges were or are elected or appointed after June 9, 1943.

(2) Any person deemed to have retired under the provisions of the second paragraph of section 2, chapter 294, Oregon Laws 1943, as amended by section 1, chapter 315, Oregon Laws 1949, shall receive retirement pay in the amount and under the terms prescribed in that paragraph, which is continued in force for this purpose.