TITLE 5

DISTRICT COURTS AND CIVIL PROCEEDINGS THEREIN

Chapter 46. District Courts and Civil Proceedings Therein

Chapter 46

1959 REPLACEMENT PART

District Courts and Civil Proceedings Therein

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DISTRICT COURTS GENERALLY

46.010 Creation of Multnomah County District Court. There shall be in every county of 300,000 population, or more, a court which shall be styled "The District Court of the State of Oregon, for the County of ———" (insert the name of the county in which the court is located). The court shall consist of four judges.

Note: Pursuant to this section, a district court has been established in Multnomah County.

46.020 Creation of district courts in counties of 50,000 to 200,000. There shall be in every city which is a county seat of any county having over 50,000 and less than 200,000 population, a court which shall be styled "The District Court of the State of Oregon, for the County of ———" (insert the name of the county in which the court is located). The court in each county having over 50,000 and not over 125,000 population shall consist of one judge, and the court in each county having over 125,000 and less than 200,000 population shall consist of two judges. [Amended by 1957 c.405 §1]

Note: Pursuant to this section, district courts have been established in the following counties and cities:

Clackamas—Oregon City
Douglas—Roseburg
Jackson—Medford
Lane—Eugene
Linn—Albany
Marion—Salem
Washington—Hillsboro

The district court in Lane County consists of two judges; the district courts in the other named counties consist of one judge each.

46.025 Creation of district courts in counties of 30,000 to 50,000, in counties of less than 25,000 having a county seat of 11,000 or more, in counties of 13,000 to 16,000, and in counties of 25,000 to 30,000 having a county seat of less than 8,000 population. (1) There shall be in each of the following cities a court which shall be styled "The District Court of the State of Oregon for the County of ————" (insert the name of the county in which the court is located):

(a) Every city having a population of 11,000 or more which is the county seat of a county having a population of less than 25,000.

(b) Every city which is the county seat of a county having a population of more than 30,000 and not more than 50,000.

(c) Every city which is the county seat of a county having a population of 13,000 or more and less than 16,000.

(d) Every city having a population of less than 8,000 which is the county seat of a county having a population of 25,000 or more and not more than 30,000.

The latest federal decennial census shall be used in determining the population of cities and counties under this subsection.

(2) The establishment and organization of a district court in any city meeting the requirements of subsection (1) of this section is postponed:

(a) Until the expiration of the elective term of the justice of the peace in office in the city at the time it first meets such requirements, unless such justice of the peace is legally qualified to be a district judge for the district court; or

(b) If the office of the justice of the peace in the city at the time it first meets such requirements is vacant or thereafter becomes vacant for any reason, until a person legally qualified to be a district judge for the district court is appointed by the Governor and qualifies. In the event of such a vacancy and notwithstanding the provisions of ORS 51.260, the Governor, as soon as possible, shall appoint a legally qualified person to be a district judge for the district court, who shall qualify as soon as possible after his appointment and who shall serve until his successor is elected and qualified under subsection (4) of this section.

(3) If the establishment and organization of a district court is postponed under paragraph (a) of subsection (2) of this section, a legally qualified person to be a district judge for the district court, when such court is established and organized, shall

be nominated and elected in the manner provided by law for district judges at the primary and general elections next preceding the date of the expiration of the elective term of the justice of the peace in office in the city at the time it first meets the requirements of subsection (1) of this section.

(4) A person legally qualified to be a district judge for the district court to succeed a person appointed under paragraph (b) of subsection (2) of this section shall be nominated and elected in the manner provided by law for district judges at the primary and general elections next succeeding such appointment.

(5) Each district court established and organized under this section shall consist of one judge. [Amended by 1953 c.563 §7; 1957 c.726 §1; 1959 c.559 §3]

Note: Pursuant to this section, district courts have been established in the following counties and cities:

Benton—Corvallis
Clatsop—Astoria
Coos—Coquille
Deschutes—Bend
Klamath—Klamath Falls
Umatilla—Pendleton
Yamhill—McMinnville

The 1957 amendment to this section authorized the establishment of a district court in the following county and city:

Wasco—The Dalles

The 1959 amendment to this section, which becomes operative on August 1, 1960, authorizes the establishment of a district court in the following county and city:

Polk—Dallas

Until August 1, 1960, ORS 46.025 as compiled in the 1957 Replacement Part (replaced in 1959) will remain operative.

46.030 Territorial limits of district courts. The territorial limits of a district court, over which the court shall have jurisdiction, shall be coextensive with the boundary of the county in which the court is located; however, in civil cases the territorial jurisdiction of the court shall be the same as that of a circuit court, subject to the same conditions and restrictions as apply to circuit courts and subject to the laws relating to venue of actions. [Amended by 1953 c.112 §2]

46.040 Jurisdiction, criminal. Except as is otherwise provided in ORS 3.150, district courts shall have the same criminal and quasi criminal jurisdiction as justices' courts, and shall have concurrent jurisdiction with the circuit courts of all misdemeanors committed or triable in their respective counties where the punishment prescribed does not exceed one year's imprisonment in the county jail or a fine of $3,000, or both such fine and imprisonment.

46.050 District judges to be magistrates. The judges of district courts shall be magistrates. It shall be the duty of one of the judges of a district court organized under ORS 46.010, or of a district court organized under ORS 46.020 in a county having over 125,000 and less than 200,000 population, to sit as committing magistrate, in a manner to be determined among them. [Amended by 1957 c.405 §3]

46.060 Jurisdiction, civil, generally. (1) The district courts shall have jurisdiction, but not exclusive, in the following cases:

(a) For the recovery of money or damages only when the amount claimed does not exceed $1,000. When in such a case arising out of contract the ends of justice demand that an account be taken or that the contract or contracts be reformed or canceled, the district court shall have jurisdiction to decree such accounting, reformation or cancelation.

(b) For the recovery of specific personal property when the value of the property claimed and the damages for the detention do not exceed $1,000.

(c) For the recovery of any penalty or forfeiture, whether given by statute or arising out of contract, not exceeding $1,000.

(d) To give judgment without trial upon the confession of the defendant for any of the causes of action specified in this section, except for a penalty or forfeiture imposed by statute.

(e) To hear and determine actions of forcible entry and detainer.

(f) To enforce, marshal, and foreclose liens upon personal property where the amount claimed for such liens does not exceed $1,000, and to render personal judgment therein in favor of any party.

(g) Actions and proceedings of interpleader and in the nature thereof, when the amount of money or the value of the property involved does not exceed $1,000.

(h) Actions and proceedings, whether legal or equitable, to preserve the property or rights of any party to an action of which the court has jurisdiction, and to enforce the collection of its own judgments, including all actions and proceedings in the nature of

creditor's bills and in aid of execution, to subject the interest of a judgment debtor in personal property to the payment of such judgment. District courts shall not have jurisdiction to appoint receivers.

(2) Whenever an action or proceeding is properly brought in a district court, the court shall have jurisdiction to hear and determine, preserve and enforce all rights involved therein, including all cases in equity when pleaded as defensive matter, and to exercise all legal and equitable remedies necessary or proper for complete determination of the rights of the parties, subject to the limitations imposed by this section.

(3) Wherever in this chapter reference is made to actions or proceedings, it includes any equitable proceeding of which a district court has jurisdiction.

(4) Whenever it shall appear from the pleadings in any cause that the title to real property is in dispute, the court shall order the pleading raising that question stricken unless within five days the party who has raised such issue shall file with the clerk of the district court a written request for the transfer of the cause to the circuit court, accompanied by the tender of the costs of such transfer. In the event of such request and tender, the clerk of the district court shall, within 10 days thereafter, file with the clerk of the circuit court of the county a transcript of the cause, to contain a copy of all the material entries in the docket of the district court, together with all the original papers relating to such cause, whereupon the district court shall proceed no further, but such cause shall thenceforth be considered as transferred to the circuit court, which shall then have jurisdiction and shall proceed to hear, try and determine the same. All costs incurred in the transfer of such cases, including the filing fee in the circuit court, shall be borne by the party raising such issue and must be tendered to the clerk of the district court at the time of filing the written request, and such costs may be recovered by him in the event he prevails. In the event of the failure of the clerk of the district court to file the transcript in the circuit court within the time specified, the circuit court may make an order upon the clerk to comply within a specified time with the provisions of this subsection. [Amended by 1957 c.661 §1]

46.070 Jurisdiction of counterclaims. In all actions instituted in a district court a defendant shall have the right to plead a counterclaim in excess of the jurisdiction of the court, whereupon the clerk shall, upon order of the court and within 10 days thereafter, file with the clerk of the circuit court of the county a transcript of the cause, containing a copy of all the material entries in the docket of the district court together with all the original papers relating to such cause. Upon the filing of the transcript with the clerk of the circuit court, the district court shall proceed no further, but the cause shall thenceforth be considered as transferred to the circuit court, which shall then have jurisdiction and shall proceed to hear, try and determine the same. In the event of the failure of the clerk of the district court to file the transcript in the circuit court within the time specified, the judge of the circuit court may make an order upon the clerk to comply within a specified time with the provisions of this section. The plaintiff in such action shall have 10 days after the filing of such transcript in the circuit court in which to move against, demur or reply to the defendant's answer. All costs incurred in the transfer of such case, including the filing fee in the circuit court, shall be borne by the defendant, and must be tendered by him to the clerk of the district court at the time of filing the counterclaim, and such costs may be recovered by the defendant in the event he prevails. On failure of the defendant to pay the required fee at the time of filing the counterclaim, the district court shall strike the counterclaim and proceed to try the cause as though it had never been filed. In any action instituted in a district court wherein the amount claimed by the plaintiff is not in excess of its jurisdiction and the amount claimed by the defendant by way of counterclaim is not in excess of its jurisdiction, the district court shall have jurisdiction of such cause notwithstanding the combined amounts of such claim and counterclaim exceed the sum of $1,000.

46.080 Jurisdiction in ancillary, supplemental and incidental proceedings. In civil actions the district courts shall have jurisdiction, as in like cases in the circuit courts, in every ancillary, incidental and supplemental proceeding, before and after judgment, including the provisional remedies of arrest, attachment and delivery of personal property claimed in the action as well as interpleader, trial of rights of personal property, and exemption, aid of execution, revival and renewal

of judgment, the direction of references, and the taking of accounts where necessary to preserve the property or rights of any party to an action of which the district court has jurisdiction. All affidavits, orders and undertakings for such provisional, ancillary or supplemental proceedings are to be filed with the clerk of the district court, and such process is to be issued by him and may be made returnable before the judge of the court, or, where the court has more than one judge, before any of the judges. Supplemental process against the personal property of the judgment debtor may be issued by the clerk of the district court to the sheriff of any county in this state. A writ of arrest or of attachment or an order for the delivery of personal property claimed in the action may be served and executed by any person authorized to serve a summons. [Amended by 1957 c.661 §2]

46.090 Jurisdiction where real property involved. ORS 52.250, 52.590, 52.620 and 52.690 shall apply to civil actions and suits in district courts. [Amended by 1955 c.664 §1; 1957 c.661 §3]

46.092 Transfer of certain judicial jurisdiction of certain county courts to district courts. (1) In counties having an established and organized district court the offices and courtrooms of which are located and the functions of which are carried on in the county courthouse, all judicial jurisdiction, authority, powers, functions and duties of the county courts and the judges thereof are transferred to the district courts and the judges thereof, except jurisdiction, authority, powers, functions and duties:

(a) Pertaining to juvenile courts;

(b) Set forth in ORS chapters 419, 420 and 444 pertaining to the welfare and health of juveniles and of delinquent and dependent children, provided that the concurrent jurisdiction given county courts in ORS 167.220, subsection (2), is given to the district courts;

(c) Exercisable in the transaction of county business.

(2) The jurisdiction transferred to a district court from a county court under subsection (1) of this section shall not be disturbed if, subsequent to such transfer, the offices or courtrooms of the district court are located or any of the functions of the district court are carried on at a place other than the county courthouse. [1955 c.540 §1; 1957 c.403 §1]

Note: Pursuant to ORS 46.092 to 46.098, prior to amendment by 1957 c.403, probate jurisdiction appears to have been transferred from the county court to the district court in the following counties: Benton, Coos, Deschutes, Linn, Umatilla and Washington.

Pursuant to ORS 46.092 to 46.098, as amended by 1957 c.403, all judicial jurisdiction, other than that relating to juvenile matters, appears to have been transferred from the county court to the district court in the following counties: Benton, Clatsop, Deschutes, Linn, Umatilla and Washington.

Pursuant to ORS 3.130, as amended by 1957 c.713 §6, judicial jurisdiction was transferred from the county court to the circuit court in Coos County. This transfer became effective prior to the transfer set forth in the 1957 amendment to ORS 46.092 to 46.098. Thus, although the district court in Coos County did not receive additional jurisdiction by reason of the 1957 amendment to ORS 46.092 to 46.098, it has probate jurisdiction acquired pursuant to ORS 46.092 to 46.098, prior to amendment by 1957 c.403, and also has whatever additional jurisdiction is given by other statute sections to courts having probate jurisdiction. For example, see ORS 109.310, 126.605, 426.060, 426.070 and 427.030.

As of July 1, 1959, since the offices and courtrooms of the district court in Yamhill County are not located in the county courthouse, and its functions are not carried on there, ORS 46.092 to 46.098 do not apply in Yamhill County.

Since judicial jurisdiction was transferred from the county court to the circuit court in Clackamas, Douglas, Jackson, Lane, Klamath, Marion and Multnomah Counties prior to January 1, 1956, the transfer set forth in ORS 46.092 to 46.098 does not apply in these counties. See the editorial note under ORS 3.130.

ORS 46.092 to 46.098 will probably apply in Polk and Wasco Counties when district courts are established in these counties pursuant to the authorization set forth in the 1957 and 1959 amendments to ORS 46.025.

46.094 Transfer of pending matters. All matters, causes and proceedings relating to such jurisdiction pending in the county court when jurisdiction is transferred to the district court under ORS 46.092 are transferred to the district court. [1955 c.540 §2; 1957 c.403 §2]

46.096 Application of laws governing county courts to district courts exercising jurisdiction formerly vested in county courts. The district courts and the judges thereof to which jurisdiction is transferred under ORS 46.092 shall be governed by the existing laws relating to the transferred jurisdiction, in so far as they may be applicable, as though the district courts and judges thereof had originally been referred to in such existing laws. [1955 c.540 §3; 1957 c.403 §3]

46.098 Circuit court exercising jurisdiction of district court while district judge unable to act. If at any time the district judge is by reason of illness, or other good cause, absent or unable to exercise the jurisdiction transferred from the county court to the district court under ORS 46.092, such jurisdic-

tion may be exercised during such time by the circuit court for the county in which the district court is located. [1955 c.540 §4; 1957 c.403 §4]

46.100 Commencement, prosecution and enforcement of civil actions; return of process. Unless otherwise provided in this chapter, civil actions in district courts shall be commenced and prosecuted to final determination and judgment enforced therein in the manner provided for similar actions in the circuit courts. Process issued by the clerk of the district court is returnable to him or to the judge or judges of the district court. [Amended by 1957 c.661 §4]

46.110 Summons. The summons in district courts shall be issued, served, published and returned in the same manner and with the same effect as provided in ORS 15.020 to 15.080, 15.100 to 15.120, and 15.140 to 15.160, with respect to proceedings in the circuit courts, except that it shall require the defendant, if served within the county in which the action is commenced, to appear and answer the complaint within seven days from the date of the service, or if served without the county in which the action is commenced, to appear and answer the complaint within 20 days from the date of service.

46.120 Service of process. (1) The summons of a district court shall be served by the sheriff of the county or his deputy, or any constable of the county or his deputy, or by a marshal or chief of police of any incorporated city within the limits of such city, or by any competent person over the age of 21 years who is a resident of the State of Oregon and is not a party to or an attorney in the action. The summons shall be returned to the clerk with whom the complaint is filed within 60 days after its delivery to the person for service, with proof of such service; provided, however, that a person, other than an officer, making such service shall make an affidavit of service in the same manner as provided in ORS 15.110, or that the defendant cannot be found. When served out of the county in which the action is commenced the summons may be returned by mail. The person to whom the summons is delivered for service shall indorse thereon the date of such delivery.

(2) Service of all processes of a district court, other than the summons, shall be made by one of the officers named in ORS 52.120.

(3) Compensation to such persons serving the summons and processes shall be as provided in subsection (2) of ORS 15.060. [Amended by 1953 c.479 §4]

46.130 Process returnable before presiding judge and authority of other judges in Multnomah and Lane Counties. In a district court organized under ORS 46.010, or in a district court organized under ORS 46.020 in a county having over 125,000 and less than 200,000 population, the original process shall be returnable, and the party summoned required to appear before the presiding judge, but any of the judges shall have authority to hear and determine any action or proceeding instituted in the court, and which may be assigned or transferred to him, or any motion, application or issue therein, and to make any necessary and proper orders therein. [Amended by 1957 c.405 §4]

46.140 Affidavit of prejudice, in Multnomah County District Court. No judge of a district court organized under ORS 46.010 shall sit to hear or try any action or proceeding when it is established by motion supported by affidavit that the judge before whom the action or proceeding is pending is prejudiced against any party or attorney, or the interests of any party or attorney, so that such party or attorney cannot, or believes that he cannot, have a fair and impartial trial before such judge, and that such motion is not filed for the purpose of delay. Upon the filing of such motion, supported by affidavit, the presiding judge shall forthwith transfer the action or proceeding to another department of the same court. Such affidavit to be effective must be filed not later than one day after the case is at issue upon a question of fact or within such further time as the court may allow.

46.150 Findings and conclusions, in Multnomah County District Court. In cases tried without a jury by a district court organized under ORS 46.010, the court shall not be required to make any written findings of fact and conclusions of law where the matter involved is $50 or less, exclusive of interest and costs, and in all other cases written findings of fact and conclusions of law shall be deemed to be waived unless they shall be expressly requested by one of the parties at the time of the trial.

46.160 Questions of law, authority of district courts to pass upon; instruction of juries. The district courts shall have authority to

pass upon and determine all questions of law arising in the trial of a cause, including motions for nonsuit and directed verdict, and motions for a new trial and to vacate judgment; and the judges shall, at the request of either party, or may, in their discretion without request, charge and instruct the jury as to the law applicable to the issues involved in the trial of any cause.

46.170 Jury in Multnomah County District Court. When a jury is demanded in a district court organized under ORS 46.010, such jury must be drawn and selected from the jury panel of the circuit court, as provided in this section. When an application is made to the clerk of the district court, he shall, not later than three days before the trial of such cause or action, make written application to the clerk of the circuit court for a jury of 12 persons. On the day of the trial in the district court, the clerk of the circuit court shall draw the names of not less than 12 persons from the trial jury box of the regular circuit court jury panel and direct said persons to appear at the time and place of trial in the district court. The required fee of $6 for each such jury shall be paid to the clerk of the district court in advance on the day of the trial. The jurors shall receive the same compensation provided for jurors of the circuit court and be paid in the same manner. [Amended by 1953 c.398 §2]

46.180 Juries in district courts in counties other than Multnomah County. (1) A jury may be demanded in a district court organized under ORS 46.020 or 46.025 upon notice to the adverse party and written application to the clerk of the court and payment of the fees not later than five days before trial.

(2) A jury in a district court organized under ORS 46.020 or 46.025 shall consist of six jurors of like qualification as jurors in the circuit court. Jurors shall be drawn from the district court panel as provided in ORS 10.210 and 10.220, and shall be subject to all applicable laws relating to jurors in the circuit court, including compensation and manner of payment. [Amended by 1957 c.594 §3]

46.190 Challenges of jurors. In civil actions, each party is entitled to take challenges for cause, and shall be entitled to two peremptory challenges and no more. When there are two or more parties plaintiff or defendant they must join in the challenge or it cannot be taken. The manner in which challenges may be taken shall be the same as provided for in the circuit court.

46.200 Reporters for civil cases in district courts for counties other than Multnomah County. The judge of a district court organized under ORS 46.020 or 46.025 may, upon request of the plaintiff or defendant in any civil proceeding, appoint a stenographer for the same purpose and in the same manner, and who shall take the same oath and perform the same duties respecting the district court, as is provided by statute respecting the circuit court reporter. The reporter's fee shall not exceed the sum of $10 per diem, nor the sum of $5 for one-half day or less, which fee shall be paid by the party and recovered as disbursements as provided for the reporter's fee in the circuit court.

46.210 Witness fees, costs and disbursements. In district courts the amount of witness fees shall be the same as in circuit courts. Costs and disbursements shall be allowed the prevailing party in all actions and proceedings. The amount of costs shall be the same as in circuit courts and the amount of disbursements shall be the same as in circuit courts except where otherwise provided in ORS chapter 46. Costs and disbursements shall be taxed in the manner provided by law for the allowance and taxation of costs and disbursements in circuit courts. [Amended by 1955 c.459 §1]

46.220 [Repealed by 1953 c.393 §3]

46.221 Fees in Multnomah County District Court. (1) In district courts organized under ORS 46.010 the schedule of fees shall be as follows:

(a) Appearance for plaintiff, $3.

(b) Appearance for defendants, appearing jointly, $1.50.

(c) Appearance for defendant, appearing separately, $1.

(d) Trial fee, $2.

(e) Jury fee, $6.

(f) Judgment, $2.

(g) Transcript of judgment issued, $1.

(h) Transcript of judgment with triplicate certificate attached issued, $1.

(i) Transcript on appeal issued, $1.25.

(j) Transcript of judgment filed, $1.75.

(k) Assigned small claims, $1.50.

(L) Unassigned small claims, $1.

(m) Transcript of judgment from small claims department, $1.75.

(n) Taking any affidavit, 25 cents.

(o) Preparing certification to circuit court on counterclaims, $1.25.

(p) Making certified copies of anything on file, 30 cents for each folio, except where the party demanding the same furnish such copy, in which case there shall be a charge of 20 cents a folio.

(q) Making copies (not certified) of anything on file, 25 cents for each folio.

(r) Law library fees, as specified in ORS 46.240.

(2) The clerk of said court shall collect from litigants all fees in advance, except in criminal cases, and shall each day pay the same to the county treasurer and take his receipt therefor; provided, that the trial fee and jury fee hereinabove referred to shall be paid by the party demanding such trial or jury trial in advance on the day of trial; and if the party paying such fee prevails in the action, suit of proceeding so as to be entitled to recover costs therein, such fees shall be allowed and taxed as a disbursement and collected from the adverse party. [1953 c.393 §1]

46.230 Fees in district courts for counties other than Multnomah County. The clerk of a district court organized under ORS 46.020 or 46.025 shall collect in advance in civil cases, the following fees:

Appearance for plaintiff	$3.00
Appearance for defendants appearing jointly	1.50
Appearance for defendant appearing separately	1.00
Trial fee	2.00
Jury fee when jury requested	6.00
Transcript of judgment issued	1.00
Transcript of judgment filed	1.00
Transcript on appeal issued	1.25

The clerk shall, on the day next following, pay over to the county treasurer all fees collected and taken, and the treasurer shall issue to the clerk his receipt therefor.

46.240 Law library fees. In all counties where a district court is maintained and in which law library fees are collected by the clerk of the circuit court in civil cases and applied to the support or maintenance of any law library, the clerk of the district court shall collect as a law library fee in each civil suit, action or proceeding filed in the court, excepting actions in the small claims department, in the manner in which other fees are collected therein, the sum of 25 cents from the plaintiff or other moving party at the time of the filing of the first paper therein, and the sum of 20 cents from each defendant, respondent or other party who appears separately therein or from such defendants, respondents or other parties as appear jointly therein at the time of the filing of the first paper by any such defendants, respondents or other parties. The fees shall be paid over by the clerk and used and applied in the same manner as similar fees collected in the circuit court are paid over, used and applied.

46.250 Appeal to circuit court. Either party to an action or proceeding in a district court shall have the right of appeal in all cases where an appeal may be taken from a justice's court and from a decree or other final order of the district court, which appeal shall be taken at the time and in the manner provided for taking an appeal from the justice's court. The appeal shall be taken to the circuit court for the county in which the district court is located, and be heard and determined in the manner provided by law for the hearing and determinings of appeals from justices' courts. But no appeal to the circuit court shall be taken or allowed in any action for recovery of money or damages only unless it appears from the pleadings in the case that the amount in controversy exceeds $50.

46.260 Appeal to Supreme Court in cases originating in district courts in counties other than Multnomah County. An appeal may be taken to the Supreme Court from any part of any judgment, decree or other final order of the circuit court upon an appeal from a district court organized under ORS 46.020 or 46.025, in the manner provided for appeals from the circuit court.

46.270 Dismissal of civil cases; notice required. The clerk of every district court shall mail a notice to each of the attorneys of record in every civil action, suit or proceeding in their respective courts in which no proceedings have been had or papers filed for a period of more than one year. The notice shall state that each such case will be dismissed by the court for want of prosecution 60 days from the date of mailing the notice, unless, on or before the expiration of the 60 days, application, either oral or written, be made to the court and good cause shown why it should be continued as a pending case. If such application is not made or good cause is not shown, the court shall dismiss each such case. Nothing contained in this

section shall be construed to prevent the dismissing at any time, for want of prosecution, of any suit, action or proceeding upon motion of any party thereto.

46.274 Filing and docketing transcript of judgment in circuit court; contents of transcript; filing fee. When a judgment is given in a district court in favor of anyone for the sum of $10 or more, exclusive of costs or disbursements, the party in whose favor the judgment is given may at any time when the judgment is enforceable, by paying a fee of $1, file with the county clerk of the county wherein the judgment is given a certified transcript of those entries made in the docket of the district court in respect to the action, suit or proceeding in which the judgment was entered that are required by subsections (1), (3), (5), (8), (9), (10), (11) and (12) of ORS 46.740. Thereupon the clerk shall docket in the judgment docket of the circuit court the judgment given in the district court. [1955 c.664 §2]

46.276 Lien created by docketing judgment. From the time of docketing in the judgment docket of the circuit court of a judgment of the district court the judgment shall be a lien upon the real property of the defendant as if it were a judgment of the circuit court where it is docketed. The docketing in the judgment docket of the circuit court of a judgment given in the district court shall not thereby extend the lien of the judgment more than 10 years from the original entry of the judgment in the district court. [1955 c.664 §3]

46.280 Rules of court. The judge of a district court or, where there is more than one judge, the judges jointly, may make appropriate rules for the government of the court and the officers thereof not inconsistent with law, but such rules shall not be enforced until 30 days after their promulgation.

46.290 Offices and courtrooms; supplies and equipment. The county shall provide in some convenient locality in the city where the court is located, suitable offices and courtrooms for the judge or judges and the clerk of the court and his deputies, if any. The county also shall provide all blanks, books, papers, stationery and furniture necessary to the transaction of the business of the court and the keeping of the records of the proceedings thereof.

46.300 Holding court at places outside county seat. The Supreme Court may direct the district court judges to hold court at suitable places outside the county seat on such schedule or at such times as may be necessary to promote the more speedy and efficient administration of justice. The county shall provide facilities at such places outside the county seat for district court judges to hold court. [1959 c.552 §11]

46.310 to 46.400 [Reserved for expansion]

SMALL CLAIMS DEPARTMENT

46.410 Small claims department; jurisdiction. (1) In each district court created under any law of this state there shall be a department to be known as the small claims department of the district court.

(2) All actions in the district court for the recovery of money or damages only, where the amount claimed does not exceed $20, shall be commenced and prosecuted only in the small claims department; other actions for the recovery of money or damages only, where the amount claimed does not exceed $100, may be commenced and prosecuted in such department subject to the provisions of subsection (3) of this section.

(3) If the amount claimed exceeds $20, then, at the time the claim is called for hearing, the court shall advise the defendant, in open court, of his right to elect to try the action as other actions are tried in the district court. If the defendant so elects, by oral notice in open court, the court shall require him to designate a mailing address to which copy of complaint may be mailed. The court thereupon shall enter an order requiring the plaintiff to file a formal complaint within five days following the entry of the order, to mail a copy of the complaint to the defendant at the designated address, and to attach an affidavit of such mailing to the complaint prior to the filing thereof. The defendant shall have seven days in which to move, plead or otherwise appear following the day on which the copy of the complaint would be delivered to him in due course of mail. Thereafter the action shall proceed as other causes in the district court.

(4) Jurisdiction of the person of the defendant in an action commenced in the small claims department shall be deemed acquired as of the time of service of the claim.

(5) Except as provided in subsection (3) of this section, the provisions of ORS 46.420 to 46.550 shall apply with regard to proceedings in the small claims department of any district court. [Amended by 1959 c.326 §1]

46.420 District judges to sit in small claims department; rules and regulations. The judges of a district court shall sit as judges of the small claims department, and shall jointly have power to make from time to time, for the administration and government of the small claims department, rules and regulations not inconsistent with the provisions of ORS 46.410 to 46.550.

46.430 Commencement of action. Actions in the small claims department shall be commenced by the plaintiff appearing in person or by agent before the clerk of the district court and subscribing, verifying and filing claim, in the form provided in ORS 46.440.

46.440 Claim, contents of. The claim shall contain the name of the plaintiff and of the defendant, followed by a statement, in brief and concise form, of the nature, amount and time of the accruing of the claim. It shall also state the name and residence of the defendant, if known to the plaintiff, for the purpose of serving the notice of claim on the defendant.

46.450 Hearing, time for; issuance of notice of claim. Upon the filing of a claim, the clerk shall appoint a time for the hearing of the matter and shall issue a notice of the claim, as provided in ORS 46.470, which shall be served upon the defendant.

46.460 Filing fee; travel expenses for service of process. The clerk shall collect in advance on each unassigned claim the sum of $1, and on each assigned claim the sum of $1.50. This shall be the only fee to be charged or taxed against the plaintiff in any action during the pendency and disposition of the claim, except that any officer required to serve any notice of claim, summons or any other writ or process within the limits of the district court, and outside of the corporate limits of the city wherein the district court is located, shall be entitled to collect from the litigant requesting him to make such service the actual necessary traveling expenses incurred by him.

46.470 Notice of claim; contents; service. The notice of claim shall be directed to the defendant, naming him, and shall contain a statement in brief and concise form notifying the defendant of the plaintiff's name and address, and the amount and nature of the plaintiff's alleged claim, and requiring the defendant to appear personally in court before the judge named in the notice, at a time certain, which shall not be less than five nor more than ten days from the date of service of the notice. The notice shall further provide that in case of failure to so appear, judgment will be given against the defendant for the amount of the claim. The notice shall be served by the officers provided for in ORS 52.120, in the manner provided for in ORS 52.140.

46.480 Formal pleadings unnecessary; issuance of attachment, garnishment or execution. No formal pleadings, other than the claim and notice, shall be necessary. The hearing and disposition of all actions shall be informal, the sole object being to dispense promptly justice between the litigants. No attachment, garnishment or execution shall issue from the small claims department on any claim, but may issue from the district court upon the taking of a transcript of the judgment from the department to the district court and the payment of fees as provided by law or, as in other cases, when the procedure provided for in subsection (3) of ORS 46.410 is invoked.

46.490 Assignee may file and prosecute claim. Any claim may be filed and prosecuted in the small claims department by the assignee of a cause of action upon which recovery is sought.

46.500 Appearance of attorneys or persons other than parties; witnesses; hearing and judgment. No attorney at law or other person than the plaintiff and defendant, without the consent of the judge of the district court, shall concern himself or in any manner interfere with the prosecution of litigation in the small claims department. It shall not be necessary to summon witnesses, but the parties shall have the privilege of offering evidence in their behalf by witnesses appearing at the hearing, and the judge may informally consult witnesses or otherwise investigate the controversy and give judgment or make such orders as he deems to be right, just and equitable for the disposition of the controversy.

46.510 Judgment against defendant; payment of. If the judgment or order is against the defendant, he shall pay the same forthwith upon such terms and conditions as the judge prescribes.

46.520 Certification of judgment; entry and enforcement in district court. (1) If no appeal is taken by the defendant and he fails

to pay the judgment according to the terms and conditions thereof, the clerk of the district court may, on application of the plaintiff, certify the judgment in substantially the following form:

"In the District Court of ——— County, Oregon, for ——— District.

—— ——
Plaintiff,
vs.
—— ——
Defendant,
In the Small Claims Department.

This is to certify that in a certain action before —— Judge of the District Court, Small Claims Department, had on the —— day of ——, 19—, wherein —— was plaintiff and —— was defendant, jurisdiction of the defendant having been had by personal service (or otherwise), as provided by law, the court then and there entered judgment against the defendant in the sum of —— dollars, together with the costs and disbursements herein incurred taxed at —— dollars, which judgment has not been paid.

Witness my hand this —— day of ——, 19—.

——— ———,
Clerk of the District Court,
Small Claims Department."

(2) The clerk shall enter such judgment transcript on the docket of the district court, and thereafter execution and other process on execution provided by law may issue thereon as in other cases in the district court.

46.530 Judgment, conclusiveness of. A judgment in the small claims department is conclusive upon the parties.

46.540 Records of actions. In suitable books and records provided by the county, the clerk of the district court shall keep a permanent record of all actions, proceedings and judgments had or rendered in the small claims department. The judge before whom a hearing is had shall enter judgment in such books according to the provisions of ORS 46.410 to 46.550.

46.550 Blanks, forms and record books, county to furnish. The county shall furnish the clerk with all necessary blanks, forms, record books and stationery for use in the small claims department.

46.560 to 46.600 [Reserved for expansion]

JUDGES

46.610 Qualifications of judges. (1) No person shall be eligible to the office of district judge in a district court organized under ORS 46.010 unless he is at least 21 years of age, a citizen of the United States, and for three years next preceding his election has resided in the district from which he seeks nomination and election and has been engaged therein either in active practice as an attorney and counselor at law or in the discharge of the duties of a judicial office.

(2) Except as provided in ORS 51.220, no person shall be eligible to the office of district judge in a district court organized under ORS 46.020 or 46.025 unless he is at least 21 years of age, a citizen of the United States, a resident of the district from which he seeks nomination and election and an active member of the Oregon State Bar.

46.620 Oath of judges. District judges shall take and subscribe the same oath as circuit judges.

46.630 Terms of judges; when not to practice law. Except as provided in paragraph (b) of subsection (2) or ORS 46.025 or in ORS 51.220, each judge of a district court shall hold his office for a term of six years, and until his successor is elected and qualified. During his tenure of office, a judge of a district court established under ORS 46.020 or 46.025 shall not engage in the practice of law. [Amended by 1957 c.726 §2]

46.632 Salary and expenses of judges. (1) Each judge of a district court shall receive an annual salary of $9,000.

(2) Each judge of a district court is entitled to reimbursement for his hotel bills and traveling expenses necessarily incurred by him in the performance of his duties outside the county in which the district court for which he was elected or appointed is located.

(3) The salaries and hotel bills and traveling expenses of the judges of the district courts shall be paid by the state in the same manner as the salaries and hotel bills and traveling expenses of circuit court judges. [1959 c.559 §5]

46.635 [Amended by 1953 c.563 §7; 1955 c.562 §1; 1957 c.439 §1; repealed by 1959 c.559 §10]

46.638 Temporary assignment of judge to another district court. The Supreme Court may assign a district court judge to serve

temporarily as judge of any other district court. The provisions of ORS 3.081 to 3.096 are applicable to such assignments. [1959 c.552 §8]

46.640 [Repealed by 1959 c.559 §10]

46.648 Powers of judges to act in joint or separate session; testing process. If two or more persons are sitting as judges of the district court in a county:

(1) Any two or more of them may act in joint session for the trial or determination of any cause, matter or proceeding before the court in the county, including jury cases. If the judges acting in joint session are equally divided in opinion, the opinion of the presiding judge, or if none, then of the judge senior in continuous service, or if neither, then of the judge senior in age, prevails; otherwise the decision of the majority prevails.

(2) Each of them may proceed separately with and try, simultaneously in the county, all causes, matters and proceedings brought before the court.

(3) Process may be tested in the name of any of them. [1959 c.552 §10]

46.650 Departments of Multnomah County District Court; election of judges to departments. The business of a district court organized under ORS 46.010 shall be apportioned among the several judges thereof, in four departments, to be designated Department No. 1, Department No. 2, Department No. 3, and Department No. 4. Any successor to the judge of a department shall be elected as judge of that department and preside over the same; and at each general election at which the position of judge is to be filled the department for which the judge is to be elected shall be stated upon the ballot.

46.660 Presiding judge of Multnomah County District Court. The judges of a district court organized under ORS 46.010 shall choose one of their number to be presiding judge, who may at any time be removed and another appointed in his place by a vote of the majority. In case a majority cannot be had, the circuit court shall designate one of the judges to act as presiding judge until such time as a majority can be had. During the temporary absence or disability of the presiding judge, any one of the other judges, to be designated by the presiding judge, may act as presiding judge.

46.670 Office hours of Multnomah County District Court judges. The judges of a district court organized under ORS 46.010 shall be in attendance at their offices for the dispatch of official business from 9 a. m. until 5 p. m., except on Sundays and legal holidays.

46.680 Filling vacancies in judgeships of Multnomah County District Court. All vacancies in judgeships of a district court organized under ORS 46.010 shall be filled by appointment by the Governor, and district judges so appointed shall hold office until the next general election.

46.684 Departments of Lane County District Court; election of judges to departments. The business of a district court organized under ORS 46.020 in a county having over 125,000 and less than 200,000 population shall be apportioned between the two judges thereof, in two departments, to be designated Department No. 1 and Department No. 2. Any successor to the judge of a department shall be elected as judge of and preside over that department. At each general election at which the position of judge is to be filled the department for which the judge is to be elected shall be stated upon the ballot. [1957 c.405 §5]

46.686 Presiding judge of Lane County District Court. The two judges of a district court organized under ORS 46.020 in a county having over 125,000 and less than 200,000 population shall choose one of their number to be presiding judge, who may at any time be removed and the other appointed in his place by agreement between the judges. In case such judges cannot so agree, the circuit court shall designate one of the judges to act as presiding judge until such time as such judges can so agree. During the temporary absence or disability of the presiding judge, the other judge may act as presiding judge. [1957 c.405 §6]

46.690 [Repealed by 1959 c.552 §16]

46.700 [Reserved for expansion]

CLERKS

46.710 Clerk and deputies for Multnomah County District Court. At the general election held in the year 1954, and every four years thereafter, a district court clerk who shall hold office for a term of four years shall be elected in each county having a district court organized under ORS 46.010. The

clerk shall give bond to the satisfaction of the board of county commissioners, in the sum of $5,000 for the faithful discharge of the duties of his office, and in the same manner required of other officers of the county. The clerk shall receive an annual salary of $4,800. He shall have authority to appoint to serve during his pleasure one chief deputy, one cashier, one deputy to have charge of the small claims department, one deputy to have charge of docketing all criminal records and transcripts, one deputy to perform such duties as may be delegated to him by the clerk, and, subject to the approval of the board of county commissioners, such other deputies as may be necessary. Such appointments shall be made in writing and filed in the office of the board of county commissioners.

46.720 Clerks for district courts in counties other than Multnomah County. The county clerk in counties having a district court organized under ORS 46.020 or 46.025 shall be ex officio clerk of the district court. [Amended by 1953 c.306 §17]

46.730 Duties of clerk and deputies. The clerk of a district court and his deputies shall file, keep and preserve the records, books, papers and all other property pertaining to the court; file all papers presented or delivered to him for that purpose in any action, suit or proceeding before the court; supply and execute subpenas, writs of attachment and writs of execution; and administer oaths and take affidavits. [Amended by 1955 c.664 §4]

46.740 Docket. In suitable books, strongly bound, the clerk of the district court and his deputies shall keep a permanent record of all actions, suits, proceedings, decrees and judgments had or rendered in the district court, which books shall be a public record to be known as "The Docket of the District Court." The clerk shall enter in these books the following:

(1) The title of every action, suit or proceeding commenced, with the names of all parties thereto.

(2) The name and date of the making or filing of every pleading.

(3) The relief prayed for in every complaint or counterclaim.

(4) The date of issuance of every summons, writ of attachment or execution, or other process.

(5) The date of the service of every summons, the name of the party upon whom made and the date of the return, or, if the defendant cannot be found, a statement to that effect, and where substituted service was made, a verbatim copy of the return.

(6) A memorandum of the return of every execution, writ or other process.

(7) The substance of every order.

(8) The relief granted on every judgment, including costs and disbursements.

(9) A verbatim copy of every decree.

(10) The amounts of money received on execution or tendered into court.

(11) The satisfaction of the attorney's lien, if any.

(12) All costs that accrued subsequent to the entry of the judgment.

(13) A memorandum of every order relating to admission to bail, to the taking of bail or to commitment for want of bail.

(14) Every other matter that is material or specially required by any statute. [Amended by 1955 c.664 §5]

46.750 Destruction of files in civil actions. Upon an order made by the court, clerks of the district court may destroy the original files and exhibits in all civil actions and proceedings which have been dismissed for a period of five years or in which no trial has been held for a period of five years or in which any judgment entered has been satisfied for a period of 10 years or longer prior to such destruction. [Amended by 1959 c.524 §1]

46.760 Destruction of files in criminal actions. Clerks of the district courts may destroy the original files in all criminal actions which have been dismissed or in which no judgment of conviction has been entered for a period of five years or longer prior to such destruction.

46.770 Legal forms and blanks to be furnished, in Multnomah County District Court. The clerk of a district court organized under ORS 46.010 shall keep on hand and furnish to suitors and attorneys, on application, blank forms of summons, affidavits and bonds for attachment, writs of attachment, affidavits and bonds for claim and delivery of personal property and all necessary blanks for the use of parties to actions and proceedings in the court.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on November 1, 1959.

Sam R. Haley
Legislative Counsel

CHAPTERS 47 TO 50

[Reserved for expansion]

OUTSIDE

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