

# Chapter 5

## 1961 REPLACEMENT PART

### County Courts (Judicial Functions)

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**5.010 Who holds court.** The county court is held by the county judge, except when county business is being transacted therein.

**5.020 Jurisdiction as a juvenile court.** Those county courts having judicial functions shall have juvenile court jurisdiction. [Amended by 1959 c.432 §61]

**5.030 Power of county judge to grant injunctions and orders in suits in circuit court.** The judge of any county court having judicial functions shall grant preliminary injunctions or orders in any suit in the circuit court commenced in the county, upon application of the plaintiff or his attorney, made in the manner prescribed by ORS chapter 32. The order or injunction shall be made returnable to the circuit court of such county, to be there heard and determined.

**5.040 Probate jurisdiction.** County courts having judicial functions shall have exclusive jurisdiction, in the first instance, pertaining to a court of probate; that is, to:

- (1) Take proof of wills.
- (2) Grant and revoke letters testamentary, of administration, of guardianship and of conservatorship.
- (3) Direct and control the conduct, and settle the accounts of executors and administrators.
- (4) Direct the payment of debts and legacies, and the distribution of the estates of intestates.
- (5) Order the sale and disposal of the property of deceased persons.
- (6) Order the renting, sale or other disposal of the property of minors.
- (7) Appoint and remove guardians and conservators, direct and control their conduct and settle their accounts.
- (8) Direct the admeasurement of dower.

[Amended by 1961 c.344 §95]

Note: The 1961 amendment to ORS 5.040 takes effect on January 1, 1962. Until then, ORS 5.040 (1959 Replacement Part) remains in effect.

**5.050 Transfer of contested probate matters to circuit court.** Any contested probate matter in the county court, other than upon a creditor's claim for less than \$500, shall, on motion made and filed by any party in interest, or on motion of the county court, at any time prior to the commencement of trial thereof on an issue of fact, forthwith be transferred by the county court, by order entered in its probate journal, to the circuit

court for the county in which is pending the probate proceeding out of which such contest arose, and it shall therein proceed and be tried and determined in the same manner and with like effect, except as in this section otherwise provided, as though it were in the county court. To that end, the circuit court shall have exclusively, as to such contested probate matters, all the jurisdiction and powers pertaining to a court of probate possessed in the first instance by the county court. Upon the final determination of such contested probate matter, the county court shall resume jurisdiction thereof, and pending such determination, the county court shall proceed with all uncontested matters in the probate proceeding. Upon any such transfer, all the records, files and proceedings of the county court in the probate proceeding, pertaining or germane to the contested matter, shall become likewise the records, files and proceedings of the circuit court, and the circuit court shall take judicial notice of all other matters in the probate proceeding. An appeal shall lie to the Supreme Court from the decree or other appealable determinative order of the circuit court in such contested matter, the same as from a decree or other appealable determinative order of the circuit court in a suit in equity.

**5.060 Times of holding court.** There shall be a term of the county court in each county for the transaction of judicial business on the first Monday of each month, and at such other times as the court in term or the judge in vacation may appoint, in like manner and with like effect as the circuit court or judge is authorized by ORS 4.410. The court shall be open at 10 a.m.

**5.070 When court open to probate business.** The county court is always open for the transaction of the business pertaining to a court of probate, whenever the particular proceeding or transaction is authorized to be had or done without the presence of, or notice to, another.

**5.080 County judge as interested party.** Any judicial proceedings commenced in the county court in which the county judge is a party or directly interested, may be certified to the circuit court for the county in which the proceedings are pending. If the matter is one in probate, then all the original papers and proceedings shall be certified to the circuit court, and the judge of that court shall

proceed in the manner in which the county judge would be required to proceed had the matter remained in the county court. If the matter is other than a probate matter, it shall be proceeded with in this circuit court as upon appeal from the county court to the circuit court.

**5.090 Absence of county judge, or vacancy; authority of circuit judge.** When the county judge is incapacitated, or absent from the county, or whenever there is a vacancy in the office of county judge, any circuit judge for or assigned to the county may perform the judicial functions of the county judge, hear proceedings, and enter any judgment, order or decree necessary to carry into effect the judicial jurisdiction of the county court in all matters with the same force and effect as if done by the county judge when present in the county.

**5.100 Order of docketing and disposal of business; records of proceedings.** (1) The business of the county court at each term shall be docketed and disposed of in the following order:

(a) The business pertaining to a court of probate as specified in ORS 5.040.

(b) County business.

(2) The proceedings and records of the court pertaining to the respective classifications of business specified in this section shall be kept in separate books.

**5.110 Jury.** A county court trial jury shall consist of six persons drawn by lot from the jurors in attendance upon the court at a particular term and sworn to try and determine a question of fact.

**5.120 Appeals.** (1) A party to a judicial proceeding in a county court may appeal from a decree or other final determinative order given therein. The appeal shall be taken at the time and in the manner prescribed by law for the taking of an appeal from a decree or other appealable order of the district court. The appeal shall lie to the circuit court for the county in which the county court is located and be prosecuted, heard and determined in the manner prescribed by law for the prosecution, hearing and determination of appeals from the district court.

(2) An appeal shall lie to the Supreme Court from the whole or a specified part of the decree or other final determinative order of the circuit court given upon such appeal to it, in like manner and with like effect as though it were from a decree or other appealable determinative order of such circuit court given in a suit in equity therein. [Amended by 1959 c.558 §50]

#### 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 December 1, 1961.

Sam R. Haley  
Legislative Counsel

#### CHAPTER 6

[Reserved for expansion]