# Chapter 33

## 1967 REPLACEMENT PART

(1969 reprint)

# Special Proceedings


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## PUNISHMENT FOR CONTEMPT

**33.010 Contempts defined.** (1) The following acts or omissions, in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:

(a) Disorderly, contemptuous or insolent behavior toward the judge, while holding the court, tending to impair its authority or to interrupt the due course of a trial or other judicial proceeding.

(b) A breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding.

(c) Misbehavior in office, or other wilful neglect or violation of duty, by an attorney, clerk, sheriff or other person appointed or selected to perform a judicial or ministerial service.

(d) Deceit, or abuse of the process or proceedings of the court, by a party to an action, suit or special proceeding.

(e) Disobedience of any lawful judgment, decree, order or process of the court, except as provided in ORS 23.020.

(f) Assuming to be an attorney or other officer of the court and acting as such without authority in a particular instance.

(g) Rescuing any person or property in the custody of an officer by virtue of an order or process of the court.

(h) Unlawfully detaining a witness or party to an action, suit or proceeding, while going to, remaining at, or returning from the court where the same is for trial.

(i) Any other unlawful interference with the process or proceedings of a court.

(j) Disobedience of a subpena duly served, or refusing to be sworn or answer as a witness.

(k) When summoned as a juror in a court, improperly conversing with a party to an action, suit or proceeding to be tried at such court, or with any other person, in relation to the merits of such action, suit or proceeding, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court.

(L) Disobedience by an inferior tribunal, magistrate or officer of the lawful judgment, decree, order or process of a superior court, or proceeding in an action, suit or proceeding contrary to law, after such action, suit or proceeding has been removed from the jurisdiction of such inferior tribunal, magistrate or officer.

(2) The conduct specified in paragraphs (a) and (b) of subsection (1) of this section, when committed before a judicial officer, or disobedience of the lawful order or process of such officer, made in the cases specified in ORS 1.240, is also to be deemed a contempt of the authority of such officer.

**33.020 Limitation of punishment.** (1) Every court of justice and every judicial officer has power to punish contempt by fine or imprisonment, or both; but such fine shall not exceed $300 nor the imprisonment six months, except in the cases mentioned in subsection (2) of this section; and when the contempt is not one of those mentioned in paragraphs (a) and (b) of subsection (1) of ORS 33.010, or in subsection (1) of ORS 1.240, it must appear that the right or remedy of a party to an action, suit or proceeding was defeated or prejudiced thereby before the contempt can be punished otherwise than by a fine not exceeding $100.

(2) In addition to the punishment provided for in subsection (1) of this section, the court or judge shall have power to constrain performance of any lawful order, judgment or decree of such court or judge, by imprisonment of the person failing or refusing to comply, until the order, judgment or decree has been complied with.

**33.030 Summary punishment of direct contempts.** When a contempt is committed in the immediate view and presence of the court or officer, it may be punished summarily, for which an order must be made reciting the facts as occurring in such immediate view and presence, determining that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed.

**33.040 Proceedings in case of indirect contempts.** Except as otherwise provided in ORS 23.785, in cases other than those mentioned in ORS 33.030, before any proceedings can be taken therein, the facts constituting the contempt must be shown by an affidavit presented to the court or judicial officer, and thereupon such court or officer may either make an order upon the person charged to show cause why he should not be arrested to answer, or issue a warrant of arrest to bring such person to answer in the first instance. The affidavit shall set forth the facts constituting the contempt, but need not contain recitals of matters already appearing in the record of any action, suit or proceeding in which the person charged with contempt

has been personally served with process. It shall be sufficient if the name of the State of Oregon be added as a party plaintiff in the affidavit and proceedings following it, without any action of the district attorney, and without any proceedings for adding such party.
[Amended by 1955 c.648 §2; 1961 c.210 §5]

**33.050 Procedure when defendant is already in custody.** If the party charged is in the custody of an officer by virtue of a legal order or process, except upon a sentence for a felony, an order may be made for the production of such person by the officer having him in custody, that he may answer, and he shall thereupon be produced and held, until an order is made for his disposal.

**33.060 Parties plaintiff; prosecution by district attorney.** In the proceeding for a contempt, the state is the plaintiff. In all cases of public interest, the proceeding may be prosecuted by the district attorney, on behalf of the state, and in all cases where the proceeding is commenced upon the relation of a private party, such party shall be deemed a coplaintiff with the state.

**33.070 Warrant of arrest; fixing bail; custody of person arrested.** In a warrant of arrest issued for a contempt, the court or judicial officer shall direct whether the person charged may be let to bail or be detained in custody without bail, and if he may be bailed, the amount of bail required. Upon executing the warrant of arrest, the sheriff must keep the person in actual custody, bring him before the court or judicial officer, and detain him until an order is made in the premises, unless the person arrested gives bail.

**33.080 Bail, how given.** The defendant shall be discharged from the arrest upon executing and delivering to the sheriff, at any time before the return day of the warrant, an undertaking, with two sufficient sureties, to the effect that the defendant will appear on the return day, and abide the order or judgment of the court or officer thereupon, or pay, as may be directed, the sum specified in the warrant.

**33.090 Return of warrant; investigation of charge.** The sheriff shall return the warrant of arrest, and the undertaking, if any, given him by the defendant, by the return day specified. When the defendant has been brought up or appeared, the court or judicial officer shall proceed to investigate the charge by examining the defendant, and witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

**33.100 Determination of guilt; sentence.** Upon the evidence so taken, the court or judicial officer shall determine whether the defendant is guilty of the contempt charge, and if determined to be guilty, shall sentence him to be punished as provided in ORS 33.020.

**33.110 Judgment of indemnification and for costs.** If any loss or injury to a party in an action, suit or proceeding, prejudicial to his rights therein, has been caused by the contempt, the court or judicial officer, in addition to the punishment imposed for the contempt, may give judgment that the party aggrieved recover from the defendant a sum of money sufficient to indemnify him, and to satisfy his costs and disbursements, which judgment, and the acceptance of the amount thereof, is a bar to any action, suit or proceeding by the aggrieved party for such loss or injury.

**33.130 Persons proceeded against liable to indictment; punishment.** Persons proceeded against for contempt are also liable to indictment for the same misconduct, if it is an indictable offense, but the court before which a conviction is had on the indictment, in passing sentence, shall take into consideration the punishment before inflicted.

**33.140 Nonappearance of defendant; right to recovery on undertaking.** When the warrant of arrest has been returned served, if the defendant does not appear on the return day, the court or judicial officer may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking is prosecuted, and the aggrieved party joins in the action, and the sum specified therein is recovered, so much thereof as will compensate such party for the loss or injury sustained by reason of the misconduct for which the warrant was issued shall be deemed to be recovered for such party exclusively.

**33.150 Appeal.** Either party to a judgment in a proceeding for a contempt may appeal therefrom, in like manner and with like effect as from a judgment in an action, but the appeal shall not stay the proceedings in any other action, suit or proceeding, or upon any judgment, decree or order therein, concerning

which or wherein such contempt was committed.

## ARBITRATION AND AWARD

**33.210 Controversies arbitrable.** All persons desiring to settle by arbitration any controversy, suit or quarrel, except such as respect the title to real estate or the terms or conditions of employment under collective contracts between employers and employes or between employers and associations of employes, may submit their differences to the award or umpirage of any person or persons mutually selected.

**33.220 Written arbitration agreements valid.** A provision in any written contract to settle by arbitration a controversy thereafter arising out of such contract, or out of the refusal to perform the whole or any part thereof, or an agreement in writing between persons to submit to arbitration any controversy then existing between them, shall, provided the arbitration is held within the State of Oregon, be valid, irrevocable and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

**33.230 Court order compelling parties to arbitrate as agreed.** A party aggrieved by the failure, neglect or refusal of another to perform under a contract or submission providing for arbitration, described in ORS 33.220, shall petition the circuit court, or a judge thereof, for an order directing that the arbitration proceed in the manner provided for in the contract or submission. Ten days' notice in writing of the application shall be served upon the party in default, in the manner provided by law for personal service of a summons. The court or judge shall hear the parties, and if satisfied that the making of the contract or submission or the failure to comply therewith is not an issue, shall make an order directing the parties to proceed to arbitration in accordance with the terms of the contract or submission. If the making of the contract or submission or the default is an issue, the court or the judge shall proceed summarily to the trial thereof. If no jury trial is demanded by either party, the court or judge shall hear and determine such issue. Where such an issue is raised, any party may, on or before the return day of the notice of application, demand a jury trial of the issue, and if such demand is made, the court or judge shall make an order referring the issue to a jury in the manner provided by law for referring to a jury issues in a suit in equity. If the jury finds that no written contract providing for arbitration was made or submission entered into, as the case may be, or that there is no default, the proceeding shall be dismissed. If the jury finds that a written contract providing for arbitration was made or submission was entered into and there is a default in the performance thereof, the court or judge shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

**33.240 Abatement of action or suit involving arbitrable issue.** If any action, suit or proceeding is brought upon any issue arising out of an agreement which contains a provision for arbitration of the matter in controversy in such action, suit or proceeding, then, upon application, any judge of a circuit court, upon being satisfied that the issue is referable to arbitration, shall abate the action, suit or proceeding so that arbitration may be had in accordance with the terms of the agreement. The application shall be heard similarly to hearings on motions.

**33.250 Appointment of arbitrator; number of arbitrators.** If, in the arbitration agreement, no provision is made for the manner of selecting the arbitrators, or if, for any reason, there is a failure to act or a vacancy, and no provision in the agreement for the filling thereof, then, upon application of any party to the agreement, any court of record shall appoint an arbitrator or arbitrators to fill the vacancy, who shall act with the same force and effect as if specifically named in the arbitration agreement. Unless otherwise provided, the arbitration shall be by a single arbitrator.

**33.260 Oath of arbitrators.** The arbitrators shall be sworn to try and determine the cause referred to them and to make an award under the hands and seals of a majority of them, agreeable to the terms of the submission.

**33.270 Compensation of arbitrators.** The compensation of arbitrators shall be determined by agreement between the parties to the arbitration, or, in case of their inability to agree, then by any judge of the circuit court.

**33.280 Power of arbitrators.** Arbitrators or a majority of them, shall have power to:

(1) Compel the attendance of witnesses duly notified by either party, and to enforce from either party the production of all books, papers and documents the arbitrators deem material to the cause.

(2) Administer oaths or affirmations to witnesses.

(3) Adjourn their meetings from day to day, or for a longer time, and also from place to place.

(4) Decide both the law and the facts involved in the cause submitted to them.

**33.290 Coercion of witness or party.** Whenever, on motion of any arbitrator or party in interest, it appears to the circuit court of the county in which the arbitration proceedings are pending that any witness or party has refused to answer a subpena or obey any lawful order of the arbitrator, the court may require the witness or party to show cause why he should not be punished for contempt of court, to the same extent and purpose as if the proceedings were pending before the court.

**33.300 Witness fees and costs.** Unless otherwise agreed upon, the costs of witness fees and other fees in the case shall be taxed against the losing party, and such fees shall be indorsed upon the award. When the award is confirmed as the judgment of a court of record, execution shall issue therefor as for costs in civil actions.

**33.310 Filing and service of award; judgment if no exceptions; execution.** The award of the arbitrators, together with the written agreement to submit, shall be delivered to the county clerk of the county in which is located the court of record selected to render judgment on the award. The clerk shall enter the same of record in his office. A copy of the award, signed by the arbitrators, or a majority of them, shall also be served upon or delivered to each of the parties interested in the award, and proof of such service or delivery shall be filed with the clerk. If no exceptions are filed against the same within 20 days after such service, judgment shall be entered as upon the verdict of a jury, and execution may issue thereon, and the same proceedings may be had upon the award with like effect as upon a verdict in a civil action.

**33.320 Exceptions to award.** Within the period specified in ORS 33.310, the party against whom an award was made may except in writing thereto for any of the following causes:

(1) The award was procured by corruption, fraud or undue means.

(2) There was evident partiality or corruption on the part of the arbitrators, or any of them.

(3) The arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party were prejudiced.

(4) The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

(5) There was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award.

(6) The arbitrators awarded upon a matter not submitted to them, unless it was a matter not affecting the merits of the decision upon the matters submitted.

(7) The award was imperfect in matter of form not affecting the merits of the controversy.

**33.330 Vacation or modification of award on exceptions.** If, upon exceptions filed, it appears to the court that the award should be vacated or modified, the court may refer the cause back to the arbitrators with proper instructions for correction or rehearing and, upon failure of the arbitrators to follow said instructions, the court shall have jurisdiction over the case and proceed to its determination.

**33.340 Appeal from judgment on award.** Whenever no objection is made to the entering of judgment after award, judgment shall be entered according to the award and shall have the force and effect of a judgment obtained in a court of record after default, but whenever any judgment is entered after objection on the part of any party by the order of such court, such judgment shall be subject to appeal to the higher courts in the manner provided by law for taking appeals to such courts. The right to except to or review an award or to appeal from a judgment thereon shall not be circumscribed or abridged by any contractual provisions; nor shall any burden or penalty, other than such as are provided by law, be imposed by anyone against any party who excepts or appeals.

## CHANGE OF NAME

**33.410 Jurisdiction; grounds.** Application for change of name of a person may be heard and determined by the probate court or, if the circuit court is not the probate court, the circuit court if its jurisdiction has been extended to include this section pursuant to ORS 3.275 of the county in which the person resides. No change of name of a person, except a woman upon her marriage or divorce, shall be made unless for sufficient reasons consistent with the public interest and satisfactory to the court.
[Amended by 1967 c.534 §11]

**33.420 Notice of application and decree; certificate.** Before decreeing a change of name, except as provided in ORS 109.360, the court shall require public notice of the application to be given, that all persons may show cause why the same should not be granted. The court shall also require public notice to be given of the change decreed, and on return of proof thereof may grant certificate, under the seal of the court, of the name the person is to have, which shall thereafter be his legal name.

**33.430 Name of child on birth certificate, how changed.** (1) In the case of a change, by court order, of the name of the parents of any minor child, if the child's birth certificate is on file in this state, the State Registrar of Vital Statistics, upon receipt of a certified copy of the court order changing the name, together with the information required to locate the original birth certificate of the child, shall prepare a new birth certificate for the child in the new name of his parents. The name of the parents as so changed shall be set forth in the new certificate, in place of their original name.

(2) The evidence upon which the new certificate was made, and the original certificate, shall be sealed and filed by the State Registrar of Vital Statistics, and may be opened only upon demand of the person whose name was changed, if of legal age, or by an order of a court of competent jurisdiction.

## DISCHARGE OF SURETY

**33.510 Discharge of surety on application of surety.** The surety or the representatives of any surety upon the bond of any trustee, committee, guardian, assignee, receiver, executor, administrator or other fiduciary is entitled as a matter of right to be discharged from liability as provided in this section, and to that end may, on notice to the principal named in the bond, apply to the court that accepted the bond or to the court of which the judge who accepted the bond was a member or to any judge thereof, praying to be relieved from liability as surety for the act or omission of the principal occurring after the date of the order relieving the surety, and that the principal be required to account and give new sureties. Notice of the application shall be served on the principal personally not less than five days prior to the date on which the application is to be made, unless it satisfactorily appears to the court or judge that personal service cannot be had with due diligence within the state, in which case notice may be given by personal service without the state or in such manner as the court or judge directs. Pending the hearing of the application the court or judge may restrain the principal from acting except to preserve the trust estate until further order. If upon the return of the application the principal fails to file a new bond to the satisfaction of the court or judge, the court or judge must make an order requiring the principal to file a new bond within a period not exceeding five days. If the new bond is filed upon the return of the application, or within the time fixed by the order, the court or judge must make a decree or order requiring the principal to account for all his acts and proceedings to and including the date of the decree or order, and to file such account within a time fixed, not exceeding 20 days, and discharge the surety making application from liability for any act or default of the principal subsequent to the date of the decree or order. If the principal fails to file a new bond within the time specified, a decree or order must be made revoking the appointment of the principal or removing him and requiring him to file an account within not more than 20 days. If the principal fails to file his account, the surety may make and file an account with like force and effect as though filed by the principal, and upon settlement thereof and upon the trust fund or estate being found or made good and paid over or properly secured, credit shall be given for all commissions, costs, disbursements and allowances to which the principal would be entitled were he accounting, and allowance shall be made to the surety for the expense incurred in filing the account and procuring the settlement thereof. After the filing of the account, either by the principal

or the surety, the court or judge must, upon the petition of the principal or surety, issue an order requiring all persons interested in the estate or trust to attend a settlement of the account at a time and place therein specified, and upon the trust fund or estate being found or made good and paid over or properly secured, the surety shall be discharged from all liability. Upon demand in writing by the principal, the surety shall return any compensation that has been paid for the unexpired period of the bond.

**33.520 Discharge of surety on application of principal.** Any trustee, committee, guardian, assignee, receiver, executor, administrator or other fiduciary shall be entitled to have any surety on his bond discharged from liability thereon, and the fiduciary may file a new bond as provided in this section. The fiduciary may, on written notice to the surety and to all other interested persons, apply to the court that accepted the bond, or to a judge thereof, praying that the surety be discharged from liability thereon, and that the principal be allowed to file a new bond and to account. Notice of the application shall be served on the surety and on each of the persons interested, within the state, not less than ten days prior to the date on which the application is to be made, unless it satisfactorily appears to the court or judge that the notice cannot with due diligence be served within the state, in which case notice may be given in such manner as the court or judge shall direct. Upon the return of the application, the principal may file a new bond satisfactory to the court or judge, and therewith file an account of all his proceedings, whereupon the court or judge shall proceed, upon due notice to all persons interested, to judicially settle the account and duly credit and charge the principal; and upon the trust fund or estate being found or made good and paid over or properly secured, the surety shall be discharged from all liability.

## EVALUATING SECURITIES OF SECURED CREDITOR

**33.610 Evaluating securities of secured creditor.** In the administration of a decedent's estate, or whenever the assets of any person, partnership or corporation are being administered in receivership or any liquidation proceedings, or under an assignment for the benefit of creditors, the value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which the securities were delivered to the creditors, or by the creditors and the person or official liquidating the assets by agreement, arbitration, compromise or litigation. Where the proceedings are in court, the determination shall be subject to the control or decision of the court. If, under an assignment for the benefit of creditors, the secured creditor and the assignee cannot, by agreement, arbitration or compromise, determine the value, either the assignee or the creditor may apply to a court of competent jurisdiction in the place of residence of the assignee for determination of the value by declaratory judgment, or otherwise. In all cases, the amount of the determined value shall be credited upon the secured claim and a general or unsecured creditor's dividend shall be paid only on the uncredited balance, if any, of the claim. Nothing contained in this section shall be construed to compel any creditor holding security to file a claim for participation in any such estate or proceeding, or to compel him, if he does not file a claim, to foreclose or realize upon his security.

## DETERMINATION OF LEGALITY OF DISTRICT'S ORGANIZATION AND ACTIONS

**33.710 Judicial examination to determine legality of any district's organization and actions.** (1) The board of directors (which term as used in ORS 33.710 and 33.720 means the governing body, board or commission) of any district created or established as a municipal corporation, quasi-municipal or public corporation, by vote of the duly qualified electors within the district and proclamation as provided by law may, by petition, commence a proceeding in the circuit court of the county in which the district or the greater part thereof is located, for the purpose of having a judicial examination and judgment of the court as to the regularity and legality of:

(a) The proceedings in connection with the establishment or creation of the district, including any action or proceedings proclaiming the creation of the district or declaring the result of any election therein.

(b) The proceedings of the board and of the district providing for and authorizing the issue and sale of bonds of the district, whether the bonds or any of them have or have not been sold or disposed of.

(c) Any order of the board levying a tax.

(d) The authorization of any contract and as to the validity of the contract, whether or not it has been executed.

(2) All proceedings of the district may be judicially examined and determined in one special proceeding, or any part thereof may be separately examined and determined by the court.

**33.720 Proceeding in rem; practice and procedure as in equity; service by publication; appeal; costs.** (1) The determination authorized by ORS 33.710 shall be in the nature of a proceeding in rem; and the practice and procedure therein shall follow the practice and procedure of suits in equity, as far as the same is consistent with the determination sought to be obtained, except as provided in this section.

(2) Jurisdiction of the district shall be obtained by the publication of notice directed to the district; and jurisdiction of the qualified voters of the district shall be obtained by publication of notice directed to all qualified voters, freeholders, taxpayers and other interested persons, without naming such voters, freeholders, taxpayers and other interested persons individually. The notice shall be served on all parties in interest by publication thereof for at least once a week for three successive weeks in a newpaper of general circulation published in the county where the proceeding is pending, or if no such newspaper is published therein, then in a contiguous county. Jurisdiction shall be complete within 10 days after the date of completing publication of the notice as provided in this section.

(3) Any person interested may at any time before the expiration of the 10 days appear and contest the validity of such proceeding, or of any of the acts or things therein enumerated. Such proceeding shall be tried forthwith and judgment rendered as expeditiously as possible declaring the matter so contested to be either valid or invalid. Any order or judgment in the course of such proceeding, or any final decree therein, may be made and rendered by the judge in vacation or otherwise; and for that purpose, the court shall be deemed at all times to be in session and the act of the judge in making the order, judgment or decree shall be the act of the court.

(4) Either party may appeal to the Supreme Court from the final judgment or decree rendered in such proceeding. The court, in inquiring into the regularity, legality or correctness of any proceeding of the district or its board of directors shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties to the special proceeding, and may approve the proceedings in part and may disapprove and declare illegal or invalid in part other or subsequent proceedings, or may approve or disapprove the proceedings, or may approve the proceedings in part and disapprove the remainder thereof.

(5) Costs of the proceeding may be allowed and apportioned between the parties in the discretion of the court.

**33.810** [1955 c.522 §1; repealed by 1967 c.460 §8]

**33.820** [1955 c.522 §2; repealed by 1967 c.460 §8]

**33.830** [1955 c.522 §3; repealed by 1967 c.460 §8]

**CERTIFICATE OF LEGISLATIVE COUNSEL**

Pursuant to ORS 173.170, I, Robert W. Lundy, 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, 1967.

Robert W. Lundy
Legislative Counsel