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## SUPREME COURT

**2.010 Number of judges of Supreme Court.** The Supreme Court shall consist of seven judges.

**2.020 Qualifications of judges.** (1) The judges of the Supreme Court shall be citizens of the United States, and shall have resided in this state at least three years next preceding their election or appointment.

(2) All persons elected judges of the Supreme Court must, at time of their election, have been admitted to practice in the Supreme Court of Oregon.

**2.040 Position number of judges.** The positions of the members of the Supreme Court shall be designated by the numbers 1 to 7, following the designation made by section 1, chapter 241, Laws of Oregon 1929, and each incumbent shall be designated by the same position number as the judge whom he succeeds in office.

**2.045 Chief Justice.** (1) A Chief Justice of the Supreme Court shall be selected from their own number by vote of a majority of the members of the Supreme Court. The Chief Justice shall hold office as such for a term of six years from the date of his selection.

(2) The Chief Justice's term of office as such is not interrupted by the expiration of his term of office as judge of the Supreme Court if he is elected judge of the Supreme Court for a succeeding term.

(3) A judge selected as Chief Justice may be selected to succeed himself as such. If the Chief Justice vacates his office as judge of the Supreme Court by reason of death, resignation, failure of reelection or otherwise, or if the Chief Justice vacates his office as such by reason of resignation, expiration of his term as Chief Justice or otherwise, a successor Chief Justice shall be selected for a term of six years.

[1959 c.384 §2 (enacted in lieu of ORS 2.050)]

**2.050** [Repealed by 1959 c.384 §1 (ORS 2.045 enacted in lieu of ORS 2.050)]

**2.052 Appointment of certain judges or retired judges to serve as judges pro tempore.**

(1) The Supreme Court may appoint any regularly elected and qualified judge of the circuit court, or of the Court of Appeals, or any retired judge of the Court of Appeals, or any retired judge of the Supreme Court to

serve as judge pro tempore of the Supreme Court whenever:

(a) Any regularly elected judge of the Supreme Court, by reason of absence, illness or other good cause, is unable to perform the duties of his office or to perform his part of the work of the court; or

(b) Any regularly elected judge of the Supreme Court is disqualified from sitting in a particular case which he otherwise would hear; or

(c) The business of the Supreme Court is so congested as to cause undue delay in the disposition of cases pending before it.

(2) The appointment shall be made by order of the Supreme Court. The order shall state the maximum period of time during which the judge pro tempore shall serve under such appointment.

(3) Before entering upon his duties as judge pro tempore of the Supreme Court, the appointee shall take and subscribe, and transmit to the Secretary of State, an oath of office in substantially the form prescribed by section 7, Article VII (Amended) of the Oregon Constitution.

[1959 c.44 §1; 1969 c.198 §31]

**2.055 Powers and duties of judge pro tempore.** Each judge serving as judge pro tempore of the Supreme Court as provided in ORS 2.052 has all the power and duties, during the term of his appointment, of a regularly elected and qualified judge of the Supreme Court. Every decision, order or determination made by the Supreme Court while one or more judges pro tempore are so serving as judges of the court shall be as binding and effective in every respect as if all of the judges participating were regularly elected judges of the court.

[1959 c.44 §2]

**2.058 Compensation and expenses of judge pro tempore.** (1) A circuit court judge serving as a judge pro tempore of the Supreme Court as provided in ORS 2.052 shall receive, in addition to his regular salary and expenses, the following compensation and expenses:

(a) His hotel bills and traveling expenses necessarily incurred by him in the performance of his duties as a judge pro tempore; and

(b) During the period of his service as a judge pro tempore, an amount equal to the salary of a regularly elected judge of the Supreme Court for such period diminished by

the amount received by him in payment of his salary as a circuit judge for such period.

(2) A retired judge of the Supreme Court or of the Court of Appeals serving as a judge pro tempore of the Supreme Court as provided in ORS 2.052 shall receive, in addition to any retirement pay he may be receiving the following compensation and expenses:

(a) His hotel bills and traveling expenses necessarily incurred by him in the performance of his duties as a judge pro tempore; and

(b) During the period of his service as a judge pro tempore, an amount equal to the salary of a regularly elected judge of the Supreme Court for such period diminished by the amount of retirement pay received by him for such period.

(3) A judge of the Court of Appeals serving as a judge pro tempore of the Supreme Court as provided in ORS 2.052 shall receive the same salary and expenses as a regularly elected judge of the Supreme Court.

(4) A judge of the Supreme Court serving pro tempore as a judge of the Court of Appeals shall receive his salary and expenses as a judge of the Supreme Court.

(5) The compensation and expenses payable under subsections (1) and (2) of this section shall be paid upon certificate in the same manner as provided in ORS 3.060. [1959 c.44 §3; 1961 c.387 §1; 1969 c.198 §32]

**2.060** [Amended by 1955 c.127 §1; repealed by 1959 c.44 §7]

**2.070 Clerical assistants for judges.** The Supreme Court may appoint and fix the compensation of such number of clerical assistants to the judges of the court as it deems necessary.

**2.080 Terms of court.** There shall be two terms of the Supreme Court held annually in the capital, commencing on the first Monday in March and the first Monday in October in each year, and at such other times as the court may appoint; and two terms at Pendleton, commencing on the first Monday in May and the last Monday in October of each year and at such other times as the court may appoint.

**2.090 Place of holding Pendleton sessions; supplies.** The courthouse at Pendleton shall be used by the Supreme Court for its sittings in that place, when the circuit court is not in session, or such other place in Pendleton as the court may direct, or the county

court of Umatilla County provide; and the the Secretary of State shall furnish there the necessary stationery and books for the use of the court and for the keeping of its records.

**2.100 Quorum.** Subject to ORS 2.111, the presence of a majority of all the judges of the Supreme Court is necessary for the transaction of any business therein; but any less number may meet and adjourn from day to day, or for the term, with the same effect as if all were present.

[Amended by 1959 c.44 §6]

**2.110** [Repealed by 1959 c.44 §4 (ORS 2.111 enacted in lieu of ORS 2.110)]

**2.111 Departments of court; sitting in departments or in banc.** (1) In hearing and determining causes, the Supreme Court may sit all together or in departments.

(2) A department shall consist of not less than three nor more than five judges. For convenience of administration, each department may be numbered. The Chief Justice shall from time to time designate the number of departments and make assignments of the judges among the departments. The Chief Justice may sit in one or more of the departments and when so sitting shall preside. The Chief Justice shall designate a judge to preside in each department in his absence.

(3) The majority of any department shall consist of regularly elected and qualified judges of the Supreme Court.

(4) The Chief Justice shall apportion the business to the departments. Each department shall have power to hear and determine causes and all questions which may arise therein, subject to subsection (5) of this section. The presence of three judges is necessary to transact business in any department, except such as may be done in chambers by any judge. The concurrence of three judges is necessary to pronounce a judgment.

(5) The Chief Justice or a majority of the regularly elected and qualified judges of the Supreme Court may at any time order a cause to be heard in banc. When sitting in banc, the court may include not more than two judges pro tempore of the Supreme Court. When the court sits in banc, the concurrence of a majority of the judges participating is necessary to pronounce a judgment, but if the judges participating are

equally divided in their views as to the judgment to be given, the judgment, decree or order appealed from shall be affirmed.

[1959 c.44 §5 (enacted in lieu of ORS 2.110)]

**2.120 Rules, generally.** The Supreme Court shall have power to make and enforce all rules necessary for the prompt and orderly dispatch of the business of the court, and the remanding of causes to the court below.

**2.130 Rules governing original jurisdiction.** The Supreme Court is empowered to prescribe and make rules governing the conduct in that court of all causes of original jurisdiction therein.

**2.140** [Repealed by 1953 c.345 §3]

### OREGON REPORTS

**2.141 Court opinions; filing; printing of and charges for advance sheets.** (1) The judges of the Supreme Court shall cause their opinions and the opinions of the Court of Appeals to be prepared, in such number and manner as they may determine, and delivered to the State Court Administrator. The administrator shall file a copy of each opinion in his office and cause other copies to be distributed as determined by the Supreme Court.

(2) The Department of General Services shall cause to be printed a sufficient number of unbound copies of such opinions as required by the administrator containing indexes and other necessary material to be used as advance sheets. The printed advance sheets shall include a subject index, which shall be prepared by a competent person to be appointed by and to be under the supervision of the judges of the Supreme Court. The administrator may furnish such advance sheets to subscribers at \$24 a year, payable in advance, keeping a mailing list and record of receipts. Individual copies of such advance sheets may be furnished upon request at \$1 per copy.

[1953 c.345 §1; 1965 c.233 §2; 1967 c.398 §1; 1971 c.193 §9; 1971 c.348 §2; 1971 c.526 §1]

**2.145 Court of Appeals opinions; publication in Oregon Reports; advance sheets.**

(1) The opinions of the Court of Appeals shall be published in the Oregon Reports.

(2) The Court of Appeals shall cause distribution of the opinions of the court in like manner and with like effect as the opinions of the Supreme Court. The Department of General Services shall perform the same duties in the printing and distribution of such opinions as for the Supreme Court.

(3) The Clerk of the Court of Appeals may furnish advance sheets of the opinions of the court in the same manner as for the Supreme Court. Subscribers to the advance sheets of the Supreme Court shall be considered subscribers to the advance sheets of the Court of Appeals without additional cost.

[Formerly 2.580]

**2.150 Publication of Oregon Reports.**

(1) The Supreme Court Reporter shall prepare, superintend and direct the publication of the decisions of the Supreme Court, which shall contain a statement of each case reported, with the names of the counsel on each side of each case, and a concise syllabus of the points decided by the court. The reporter shall insert in each volume the usual table of cases, and a complete index. The reports shall be in every respect equal to the current reports of the court, and shall be in the usual form of like reports of this and other states. Each volume shall contain, when published, not less than 700 pages.

(2) The reporter shall deliver to the State Printer the manuscript for printing as rapidly as the same is delivered to him by the judges and sufficient has accumulated for a volume, and he shall read and correct the proof of the work of the printer. The State Printer shall deliver the published volumes of Oregon Reports to the Secretary of State for distribution pursuant to ORS 2.160.

(3) The State Printer shall, upon request of the Secretary of State, reproduce by any process a sufficient number of copies of any prior volumes of Oregon Reports to enable the Secretary of State to carry out ORS 2.160.

[Amended by 1961 c.103 §1]

**2.160 Distribution of Oregon Reports.**

(1) The Secretary of State, upon receipt of the current volumes of Oregon Reports as they are published and delivered:

(a) Shall transmit a copy each to the judges, the State Court Administrator and the Reporter of the Supreme Court, the judges of the district and circuit courts, the district attorneys, the Governor, the Secretary of State, the State Treasurer, the Public Utility Commissioner, the Division of State Lands, the Department of Revenue, the Congressional Library, the United States Supreme Court, the United States district judges in Oregon, the United States Court of Appeals at San Francisco, and such number of copies to the Attorney General of this state as that officer requires.

(b) Shall deposit three copies in the Supreme Court Library and one copy in the Oregon archives.

(c) May send, if deemed advisable at any time, a sufficient number of copies to the Librarian of Congress for copyright purposes.

(2) Further distribution of current and prior volumes of Oregon Reports may be made by the Secretary of State as directed by the Department of General Services.

(3) All copies of Oregon Reports, except as provided in subsections (1) and (2) of this section, shall be sold by the Secretary of State at a price determined by the Department of General Services. With the approval of the department, he also may sell such reports at wholesale or in exchange for other volumes of Oregon Reports, in such quantities, at such prices and on such terms and conditions, including the fixing of prices at which they shall be resold, as the department may determine.

(4) The copies of Oregon Reports furnished under subsections (1) and (2) of this section to public officers of this state shall be public property and shall be delivered over by them to their successors in office.

[Amended by 1961 c.103 §2; 1971 c.193 §10]

**2.170 Receipts from advance sheets and Oregon Reports; payment of costs.** (1) All moneys collected or received by the State Court Administrator under ORS 2.141 or the Secretary of State under ORS 2.160 shall be paid into the General Fund of the State Treasury to be available for the payment of general governmental expenses.

(2) The cost of printing the advance sheets and the reports of the Oregon Supreme Court shall be paid out of moneys appropriated to the Supreme Court.

[1967 c.398 §9 (1), (2); 1971 c.193 §11]

2.310 [1953 c.34 §1; repealed by 1959 c.552 §16]

2.320 [1953 c.34 §4; 1955 c.437 §1; repealed by 1959 c.552 §16]

2.330 [1953 c.34 §§2, 3, 7; repealed by 1959 c.552 §16]

2.340 [1953 c.34 §5; repealed by 1959 c.552 §16]

2.350 [1959 c.552 §2; renumbered 8.060]

## COURT OF APPEALS

**2.510 Court of Appeals; creation; appellate jurisdiction.** (1) As part of the judicial branch of state government, there is created a court of justice to be known as the Court of Appeals.

(2) The Court of Appeals shall have ex-

clusive jurisdiction of appeals in the following matters:

(a) Appeals from judgments, as defined in ORS 19.005, of circuit courts in criminal cases:

(A) Arising under ORS 138.010 to 138.300 and 138.510 to 138.680.

(B) In habeas corpus proceedings seeking to adjudicate the validity of any conviction or imprisonment; but this subparagraph does not abrogate the original habeas corpus jurisdiction of the Supreme Court.

(C) In extradition proceedings under ORS chapter 147.

(D) In proceedings relating to probation or parole.

(E) In proceedings arising under ORS chapter 168.

(F) In proceedings arising under ORS 221.360.

(b) Appeals from judgments, as defined in ORS 19.005, of circuit courts:

(A) In proceedings arising under ORS 111.105.

(B) In proceedings arising under ORS 118.350.

(C) In guardianship and conservatorship proceedings.

(D) In adoption proceedings under ORS 109.305 to 109.400.

(c) Appeals from judgments, as defined in ORS 19.005, of circuit courts exercising jurisdiction under ORS chapter 419.

(d) Appeals from judgments, as defined in ORS 19.005, of circuit courts:

(A) In suits for divorce, either absolute or from bed and board.

(B) In suits for annulment of the marriage contract.

(C) In suits or other proceedings relating to child custody or support.

(D) In filiation proceedings.

(e) Appeals from judgments, as defined in ORS 19.005, of circuit courts on any action of or failure to act by state agencies, as defined by ORS 183.310 or 291.002 or by any agency of local government, except orders and rulings that are appealable to the Oregon Tax Court.

(f) In proceedings for review of orders of state agencies in a contested case as defined in ORS 183.310.

(3) Nothing in this section is intended to provide or create a right of appeal where such right is not otherwise provided or created by law.

[1969 c.198 §1; 1969 c.591 §262a; 1971 c.567 §1; 1971 c.734 §33]

**2.515 Jurisdiction where state agency a party.** Notwithstanding any other provision of law, all appeals from lower court decisions where a state agency, as defined in ORS 291.002, is a party shall be taken to the Court of Appeals rather than to the Supreme Court except for those cases where the Oregon Tax Court has jurisdiction.

[1969 c.198 §77]

**2.520 Procedure for review of decisions of Court of Appeals; scope of review.** (1) Any party aggrieved by a final judgment of the Court of Appeals may petition the Supreme Court for review within 30 days after the date the judgment becomes final, by filing with the clerk and serving on the adverse party or parties a notice stating that he petitions the Supreme Court for review of the final judgment of the Court of Appeals. The petition shall be allowed whenever three or more judges of the Supreme Court vote to allow it.

(2) Before petitioning the Supreme Court for review of a final judgment of the Court of Appeals, the party requesting the review shall file a timely petition for rehearing with the Court of Appeals. The petition for rehearing shall point out the errors claimed by the petitioner to have been committed by the Court of Appeals and must be filed within 20 days after the date of the decision or within such extension of time as the court may allow. Notwithstanding a petitioner's failure to comply with the requirements of this subsection, the Supreme Court may review a final judgment of the Court of Appeals upon a showing of good cause.

(3) The record on a petition for review of a final judgment of the Court of Appeals by the Supreme Court shall be transmitted by the clerk and shall consist of the record before the Court of Appeals, including the briefs filed therein, the petition for rehearing, and the Court of Appeals' opinions and orders.

(4) If the judgment of the Court of Appeals becomes final without the filing of a petition for review, or if a petition for review is denied by the Supreme Court, a certified copy of the entry of judgment shall be sent to the clerk of the court below, immediately after expiration of the time allowed for filing a petition for rehearing or the denial of review.

(5) After the Supreme Court allows a petition for review, such further proceedings shall be had as the Supreme Court by rule

may provide. However, review by the Supreme Court is limited to those errors asserted in the petition for rehearing in the Court of Appeals, unless the Supreme Court shall take notice of plain error apparent on the face of the record.

[1969 c.198 §2]

**2.530 Determination of jurisdiction; dismissal on sole issue of jurisdiction prohibited.**

(1) In any appeal before the Court of Appeals where a party asserts, or the court on its own motion suggests, that the appeal filed in the court is properly within the jurisdiction of the Supreme Court, the Court of Appeals shall refer the cause to the Supreme Court, which shall decide the question of jurisdiction in a summary manner. Its determination shall be conclusive. The Supreme Court shall refer to the Court of Appeals any cause erroneously appealed to the Supreme Court.

(2) No appeal in either the Supreme Court or the Court of Appeals shall be dismissed by either court solely for having been filed in the wrong court, but shall be considered timely filed in the court which the Supreme Court determines has jurisdiction over the appeal.

[1969 c.198 §3]

**2.540 Number of judges of Court of Appeals; qualifications; term.** (1) The Court of Appeals shall consist of five judges.

(2) A judge of the Court of Appeals shall be a qualified elector of the county of his residence and be admitted to the practice of law in this state.

(3) Each judge of the Court of Appeals shall hold office for a term of six years and until his successor is elected and qualified.

[1969 c.198 §4]

**2.550 Chief Judge.** (1) A Chief Judge of the Court of Appeals shall be selected from among the judges by a vote of the majority of the judges. The Chief Judge shall hold office as such for a term of six years from the date of his selection.

(2) The Chief Judge's term of office, as such, is not interrupted by the expiration of his term of office as judge of the Court of Appeals if he is elected judge of the Court of Appeals for a succeeding term.

(3) A judge selected as Chief Judge may succeed himself. If the Chief Judge vacates his office as judge of the Court of Appeals, or if the Chief Judge vacates his office as Chief Judge, a successor Chief Judge shall be selected for a term of six years.

[1969 c.198 §5]

**2.560 Clerical assistants for court; reporter; administrator; place of sessions; supplies; rules.** (1) The Court of Appeals may appoint and fix the compensation of such number of clerical assistants to the judges of the court as it considers necessary.

(2) The Supreme Court Reporter shall be the Reporter of the Court of Appeals.

(3) The State Court Administrator shall be administrator of the Court of Appeals.

(4) The Court of Appeals shall sit primarily in Salem, but also may sit in such other places as it considers convenient for the conduct of its business.

(5) The duty of the Secretary of State to furnish books and adequate quarters for the use of the Court of Appeals shall be the same as for the Supreme Court.

(6) The Court of Appeals may make and enforce all rules necessary for the prompt and orderly dispatch of the business of the court, and the remanding of causes to the lower courts.

[1969 c.198 §7; 1971 c.193 §7]

**2.570 Departments of court; sitting in departments or in banc.** (1) In hearing and determining causes, the judges of the Court of Appeals may sit together or in departments.

(2) A department shall consist of three judges. For convenience of administration, each department may be numbered. The Chief Judge shall from time to time designate the number of departments and make assignments of the judges among the departments. The Chief Judge may sit in one or more departments and when so sitting shall preside. The Chief Judge shall designate a judge to preside in each department in his absence.

(3) The majority of any department shall consist of regularly elected and qualified judges of the Court of Appeals.

(4) The Chief Judge shall apportion the business of the court between the departments. Each department shall have power to hear and determine causes, and all questions which may arise therein, subject to subsection (5) of this section. The presence of three judges is necessary to transact business in any department, except such business as may be transacted in chambers by any judge. The concurrence of two judges is necessary to pronounce judgment.

(5) The Chief Judge or a majority of the regularly elected and qualified judges of the Court of Appeals may at any time order a

cause to be heard in banc. When sitting in banc, the court may include not more than two judges pro tempore of the Court of Appeals. When the court sits in banc, the concurrence of a majority of the judges participating is necessary to pronounce judgment, but if the judges participating are equally divided in their view as to the judgment to be given, the judgment appealed from shall be affirmed.

[1969 c.198 §6]

2.580 [1969 c.198 §8; renumbered 2.145]

**2.590 Expenses for judges when away from state capital.** When a judge of the Court of Appeals holds court or performs any other official function away from the state capital, his hotel bills and traveling expenses necessarily incurred by him in the performance of that duty shall be paid by the state. Such expenses are to be paid upon the certificate of the judge to the truth of an itemized statement of the expenses in the manner provided by law.

[1969 c.198 §10]

**2.600 Appointment of Supreme Court judge or circuit court judge as judge pro tempore; powers and duties of judge pro tempore; compensation and expenses of judge pro tempore.** (1) The Supreme Court shall have the same authority and in like manner and effect may appoint judges pro tempore to the Court of Appeals as it may appoint judges pro tempore to the Supreme Court.

(2) The Supreme Court shall have authority to appoint a judge of the Supreme Court or a judge of the circuit court as a judge pro tempore of the Court of Appeals, but the judge shall not participate in the review by the Supreme Court of a case in which he participated while serving on the Court of Appeals.

(3) Each judge serving as judge pro tempore of the Court of Appeals has all the powers and duties during the term of his appointment of a regularly elected and qualified judge of the Court of Appeals. Every decision, order or determination made by the Court of Appeals while one or more judges pro tempore are so serving as judges of the court shall be as binding and effective in every respect as if all the judges participating were regularly elected judges of the court.

(4) The compensation and expenses of judges pro tempore of the Court of Appeals shall be the same as for judges pro tempore of the Supreme Court.

[1969 c.198 §30]

**SUPREME COURT; COURT OF APPEALS**

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**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, 1971.

Robert W. Lundy  
Legislative Counsel

