TITLE 5

DISTRICT COURTS AND CIVIL PROCEEDINGS THEREIN

Chapter 46. District Courts and Civil Proceedings Therein

Chapter 46

1971 REPLACEMENT PART

District Courts and Civil Proceedings Therein

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DISTRICT COURTS GENERALLY

46.010 Multnomah County District Court. (1) In Multnomah County there shall be a court that shall be styled "The District Court of the State of Oregon, for the County of Multnomah."

(2) The court shall have five judges, one of whom shall hold court at Gresham, Multnomah County, as directed by the Supreme Court but in no event less than one day a week. The territorial limits of the court and its civil and criminal jurisdiction shall be as otherwise provided by law for district courts. All proceedings resulting from alleged state traffic offenses or misdemeanors occurring east of 122nd Avenue extended to the north and south boundaries of Multnomah County shall be conducted in the district court in Gresham unless the accused requests trial in Portland.

(3) Multnomah County shall provide facilities in the City of Gresham for a district court judge to hold court. The court shall employ a clerk who shall be available at the City of Gresham no fewer than five days a week to provide court services. The City of Gresham and Multnomah County may enter into a cooperative agreement for providing a clerk and other court employes.

(4) The District Court of the State of Oregon for the County of Multnomah, shall have jurisdiction to hear and try violations of ordinances of any municipality located within Multnomah County if the county has entered into a cooperative agreement with any such municipality regarding the types of violations to be heard in the district court, in which district of the court they shall be heard, the manner of distribution of moneys received in fines and the sharing of expenses related to enforcement of municipal ordinances in district court.

[Amended by 1961 c.724 §16; 1965 c.510 §13; 1965 c.568 §1; 1967 c.575 §1]

46.020 [Amended by 1957 c.405 §1; 1961 c.724 §17; repealed by 1965 c.510 §24]

46.025 District courts in certain counties other than Multnomah; number of judges. (1) Subject to ORS 46.026, in each of the following cities there shall be a court that 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) The cities that are the county seats of Benton, Clackamas, Clatsop, Columbia, Coos, Curry, Deschutes, Douglas, Hood River, Jackson, Josephine, Klamath, Lane, Lincoln, Linn, Marion, Polk, Umatilla, Wasco, Washington and Yamhill Counties.

(b) The city that is the county seat of a county for which a county charter providing for the establishment and organization of such district court in such city is adopted under ORS 203.710 to 203.790.

(2) The court for each county described in this section shall have one judge, except that:

(a) The court for Clackamas County shall have two judges.

(b) The court for Douglas County shall have two judges.

(c) The court for Jackson County shall have two judges, one of whom shall hold court in the City of Ashland in Jackson County no fewer than two days a week. Jackson County shall provide facilities in the City of Ashland for a district court judge to hold court. The court shall employ a clerk who shall be available at regular hours no fewer than five days a week to provide court services for the public. The City of Ashland and Jackson County may enter into a cooperative agreement for providing a clerk and other court employes.

(d) The court for Lane County shall have three judges.

(e) The court for Marion County shall have two judges.

(f) The court for Washington County shall have two judges.

[Amended by 1953 c.563 §7; 1957 c.726 §1; 1959 c.559 §3; 1961 c.724 §18; 1965 c.510 §14; 1965 c.568 §4; 1967 c.623 §1; 1969 c.333 §1; 1971 c.640 §3]

Note: The amendment to ORS 46.025 relating to Columbia County becomes operative January 1, 1973.

46.026 Postponement of establishment of certain district courts; selection of judges of such courts. (1) The establishment and organization of a district court in a city under ORS 46.025 is postponed:

(a) Until the expiration of the elective or appointive term of the justice of the peace in office in the city at the time it first meets the requirements of ORS 46.025, unless the justice of the peace is qualified to be a judge of the district court; or

(b) If the office of the justice of the peace in the city at the time it first meets the requirements of ORS 46.025 is vacant or thereafter becomes vacant for any reason, or if the county court petitions the Governor

to appoint a judge of the district court prior to the expiration of the elective or appointive term of the justice of the peace in office in the city at the time it first meets the requirements of ORS 46.025, until a person qualified to be a judge of the district court is appointed by the Governor and qualifies. In the event of such a vacancy, or in the event the county court petitions the Governor to appoint a judge of the district court prior to the expiration of the elective or appointive term of the justice of the peace, and notwithstanding the provisions of ORS 51.260, the Governor, as soon as possible, shall appoint a qualified person to be a judge of 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 (3) of this section.

(2) If the establishment of a district court is postponed under paragraph (a) of subsection (1) of this section, when the court is established a qualified person to be a judge of the district court shall be nominated and elected in the manner provided by law for district court judges at the primary and general elections next preceding the date of the expiration of the elective or appointive term of the justice of the peace in office in the city at the time it first meets the requirements of ORS 46.025.

(3) A person qualified to be a judge of the district court to succeed a person appointed under paragraph (b) of subsection (1) of this section shall be nominated and elected in the manner provided by law for district court judges at the primary and general elections next succeeding the appointment.

(4) If a judge of the district court is appointed by the Governor under paragraph (b) of subsection (1) of this section upon petition by the county court, the district court is established and organized, but the justice district in the county seat is not abolished until the expiration of the elective or appointive term of the justice of the peace or the office of the justice of the peace becomes vacant for any reason prior to that expiration; and the district court has concurrent jurisdiction with the justice's court of crimes and actions described in ORS 51.040 to 51.100 until that abolishment.
[1961 c.724 §19; 1963 c.614 §1]

46.028 [1961 c.724 §20; repealed by 1965 c.510 §24]

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 and 131.250, 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.
[Amended by 1963 c.513 §2; 1971 c.743 §311]

46.050 Certain district judges as committing magistrates. One of the judges of a district court having two or more judges shall sit as committing magistrate as the judges agree among themselves.
[Amended by 1957 c.405 §3; 1961 c.724 §21]

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 $2,500. 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 cancellation.

(b) For the recovery of specific personal property when the value of the property claimed and the damages for the detention do not exceed $2,500.

(c) For the recovery of any penalty or forfeiture, whether given by statute or arising out of contract, not exceeding $2,500.

(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 $2,500, 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 $2,500.

(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 creditors' 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, and reference to "costs of transfer" includes fees to the clerk of the district court for a transcript of the cause and includes fees to the clerk of the circuit court for filing the appearances of both the moving party and the responding party. The costs of transfer shall be tendered to the clerk of the district court.

(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 motion for the transfer of the cause to the circuit court, accompanied by the tender of the costs of such transfer.

[Amended by 1957 c.661 §1; 1965 c.495 §1]

46.065 Election by defendant to transfer case to circuit court when amount claimed is between $1,000 and $2,500. Whenever it shall appear from the complaint in any cause that the amount claimed is less than $2,500 and more than $1,000, the defendant at his election may file with his first appearance a motion and elect to transfer said cause to the circuit court accompanied by the tender of the cost of such transfer. If defendant does not so elect to have said cause transferred to the circuit court, the district court shall proceed to try and determine the cause.

[1965 c.495 §3]

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. If a defendant has pleaded a counterclaim in excess of the jurisdiction of the district court, the court shall strike the counterclaim and proceed to try the cause as though it had never been filed, unless the defendant files with his counterclaim a motion requesting the cause to be transferred to the circuit court accompanied by the tender of the costs of such transfer. 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 $2,500.

[Amended by 1965 c.495 §2]

46.075 Procedure when case transferred to circuit court; additional pleadings; costs. (1) The district court shall order the transfer to the circuit court of every cause authorized by this chapter to be so transferred. Within 10 days therefrom the clerk of the district court shall file with the clerk of the circuit court a transcript of the cause including all the material entries in the docket of the district court and all of the original papers relating to the case. Thereupon the district court shall proceed no further with the cause. The case shall be considered transferred to the circuit court which shall then have jurisdiction to try and determine the cause.

(2) The responding party shall have 10 days after the final date allowed for the transcript to be filed in the circuit court within which to plead further. If the district clerk fails to file a transcript within the time specified, a judge of the circuit court may order him to do so within a specified time.

(3) If the moving party prevails in the circuit court, the costs of transfer borne by him may be taxed as costs.
[1965 c.495 §4]

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. All judicial jurisdiction, authority, powers, functions and duties of the county courts and the judges thereof, except juvenile court jurisdiction, authority, powers, functions and duties and the jurisdiction, authority, powers, functions and duties exercisable in the transaction of county business, are transferred to the district courts and the judges thereof:

(1) In Benton, Clatsop, Curry, Deschutes, Hood River, Lincoln, Linn, Polk, Umatilla, Wasco, Washington and Yamhill Counties.

(2) In any county for which a county charter providing for such transfer is adopted under ORS 203.710 to 203.790, to the extent that the judicial jurisdiction, authority, powers, functions and duties were not previously transferred as provided by law.
[1955 c.540 §1; 1957 c.403 §1; 1965 c.510 §15; 1967 c.534 §12; 1969 c.591 §272]

46.093 [1963 c.512 §2; repealed by 1965 c.510 §24]

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 [1955 c.540 §4; 1957 c.403 §4; repealed by 1961 c.406 §2]

46.099 Circuit court judge acting as judge of district court. In case of the absence or incapacity, including voluntary disqualification, of a judge of a district court, any judge of the circuit court for the county in which the district court is located may exercise the powers and duties of a judge of the district court for the county.
[1961 c.406 §1; 1969 c.96 §1]

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 or renewed 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; 1969 c.438 §1]

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.
[Amended by 1967 c.391 §1]

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 counties having two or more district judges. In a district court having two or more judges original process is returnable and the party summoned shall appear before the presiding judge; but any judge of the district court may hear and determine any action or proceeding instituted in the court which may be assigned or transferred to him or any motion, application or issue therein, and may make any necessary and proper orders therein.
[Amended by 1957 c.405 §4; 1961 c.724 §22]

46.140 [Repealed by 1961 c.468 §1 (ORS 46.141 enacted in lieu of ORS 46.140)]

46.141 Disqualification of judges. Judges of a district court may be disqualified for like reasons, upon like procedure and with like results and provision for obtaining another judge as those which apply to judges of circuit court under the provisions of ORS 14.210 to 14.270.
[1961 c.468 §2 (enacted in lieu of ORS 46.140)]

46.150 Findings and conclusions. In cases tried without a jury by a district court, 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.
[Amended by 1969 c.96 §2]

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 [Amended by 1953 c.398 §2; 1961 c.705 §1; repealed by 1965 c.510 §24]

46.175 Jury in Lane or Multnomah County District Court. When, in a civil or criminal proceeding, a jury is demanded in the district court for a county having a population of 170,000 or more, according to the latest federal decennial census, such jury shall 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 six 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 six persons from the trial jury box of the regular circuit court jury panel and direct such persons to appear at the time and place of trial in the district court. The jurors shall receive the same compensation provided for jurors of the circuit court and be paid in the same manner.
[1961 c.705 §3; 1965 c.510 §16; 1971 c.628 §1]

46.180 Juries in district courts for counties other than Lane and Multnomah. (1) In the district court for a county having a population of less than 170,000, according to the latest federal decennial census, a jury may be demanded in a civil or criminal proceeding upon:

(a) Notice to the adverse party; and

(b) 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 described in subsection (1) of this section 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; 1961 c.705 §2; 1965 c.510 §17; 1971 c.628 §2]

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. The judge of a district court may, upon request of the plaintiff or defendant in any civil proceeding, appoint a reporter 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, and shall receive the same fees as is provided by statute respecting the circuit court reporter.

[Amended by 1961 c.446 §2; 1969 c.96 §3; 1971 c.565 §16]

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. (1) In district courts the schedule of fees shall be as follows:

(a) Appearance for plaintiff, including the judgment, $7.

(b) Appearance for defendants, appearing separately or for defendants appearing jointly, $2.50.

(c) Trial fee, $3.

(d) Jury fee, $10.

(e) Transcript of judgment issued, $2.

(f) Transcript of judgment with triplicate certificate attached issued, $3.00.

(g) Transcript on appeal issued, $2.50.

(h) Transcript of judgment filed, $2.50.

(i) Small claims where the amount of the claim is:

(A) Not more than $20, a fee of $1.

(B) More than $20 and not more than $100, a fee of $2.

(C) More than $100 and not more than $200, a fee of $3.

(D) More than $200 and not more than $300, a fee of $4.

(E) More than $300 and not more than $400, a fee of $5.

(F) More than $400 and not more than $500, a fee of $6.

(j) Transcript of judgment from small claims department, $2.50.

(k) Taking any affidavit, $1.

(L) Preparing certification to circuit court on counterclaims, $2.

(m) Making or certifying copies of anything on file, the same fees as provided or established for the county clerk under ORS 205.320.

(n) 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 referred to in this section 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 or 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; 1965 c.510 §18; 1965 c.619 §22; 1971 c.621 §8]

46.230 [Amended by 1965 c.510 §19; repealed by 1965 c.619 §39]

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 50 cents from the plaintiff or other moving party at the time of the filing of the first paper therein, and the sum of 50 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.
[Amended by 1961 c.563 §3; 1971 c.621 §9]

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. 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, in the manner provided for appeals from the circuit court.
[Amended by 1969 c.96 §4]

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, unless the court has sent an earlier notice on its own motion. 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.
[Amended by 1971 c.224 §2]

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 $2, 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; 1965 c.619 §23; 1971 c.621 §10]

46.276 Lien created by docketing judgment; extension by renewal. (1) 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.

(2) Whenever a judgment of the district court which was docketed pursuant to ORS 46.274 is renewed by the district court, the lien established in subsection (1) of this section is automatically extended 10 years from the date of the renewal order.

(3) Notwithstanding subsection (1) of

this section, the lien created by docketing a district court judgment in the docket of the circuit court after the renewal of such judgment by the district court shall extend for 10 years from the date of the renewal order.
[1955 c.664 §3; 1969 c.438 §2]

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, the transaction of the business of the court papers, stationery and furniture necessary to and the keeping of the records of the proceedings thereof.

46.300 Holding court at places outside county seat. (1) Except as otherwise provided by subsection (2) of this section, 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.

(2) No district court judge may hold court in the City of Hermiston, Umatilla County, Oregon.
[1959 c.552 §11; 1971 c.718 §3]

SMALL CLAIMS DEPARTMENT

46.405 Small claims department; jurisdiction. (1) Each district court shall have a small claims department.

(2) All actions for the recovery of money, damages, specific personal property, or any penalty or forfeiture, where the amount or value claimed does not exceed $20, shall be commenced and prosecuted only in the small claims department. Where the amount or value claimed does not exceed $500, such actions may be commenced and prosecuted in the department.
[1971 c.760 §2]

46.410 [Amended by 1959 c.326 §1; 1965 c.569 §1; 1969 c.683 §1; repealed by 1971 c.760 §11]

46.415 District judges to sit in department; procedure. (1) The judges of a district court shall sit as judges of the small claims department and have power to make rules for the administration of the department.

(2) No formal pleadings other than the claim shall be necessary.

(3) The hearing and disposition of all cases shall be informal, the sole object being to dispense justice promptly and economically between the litigants. The parties shall have the privilege of offering evidence and testimony of witnesses at the hearing. 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.

(4) No attorney at law or person other than the plaintiff and defendant and their witnesses shall appear on behalf of any party in litigation in the small claims department without the consent of the judge of the court.

(5) Notwithstanding the provisions of ORS 9.320, a corporation, the state or any city, county, district or other political subdivision or public corporation in this state may appear as a party to any action in the small claims department without appearance by attorney.

(6) Assigned claims may be prosecuted by an assignee in small claims department to the same extent they may be prosecuted in any other state court.
[1971 c.760 §3]

46.420 [Repealed by 1971 c.760 §11]

46.425 Commencement of actions; contents of claim. (1) An action in the small claims department shall be commenced by the plaintiff's filing with the clerk of the district court a verified claim in the form prescribed by the court, and by paying the fee prescribed.

(2) The claim shall contain the name and address of the plaintiff and of the defendant, followed by a plain and simple statement of the claim, including the amount and the date the claim allegedly accrued.
[1971 c.760 §4]

46.430 [Repealed by 1971 c.760 §11]

46.435 Filing fees; service fee and mileage allowance. (1) The plaintiff filing a claim or defendant filing a counterclaim

shall pay a small claims fee based upon the amount or value claimed, according to the following schedule:

(a) Under $20, $1.
(b) $20 to $100, $2.
(c) $100 to $200, $3.
(d) $200 to $300, $4.
(e) $300 to $400, $5.
(f) $400 to $500, $6.

(2) If the defendant demands a hearing in the small claims department, he shall pay a defendant's fee of $1.

(3) Any officer required to serve any notice of claim shall be entitled to collect from the litigant requesting such service $1 and mileage for actual and necessary travel incurred in the service as provided in subsection (17) of ORS 21.410.
[1971 c.760 §5]

46.440 [Repealed by 1971 c.760 §11]

46.445 Notice; content; service. (1) Upon the filing of a claim, the clerk shall issue a notice in the form prescribed by the court.

(2) The notice shall be directed to the defendant, naming him, and shall contain a copy of the claim.

(3) The notice and claim shall be served upon the defendant in the manner provided for the service of summons and complaint in circuit court.

The notice shall state in substantially the following form:

NOTICE TO DEFENDANT
READ THESE PAPERS CAREFULLY!

Within 10 DAYS after receiving this notice you MUST do ONE of the following things:

Pay the claim OR
Demand a hearing OR
Demand a jury trial

If you fail to do one of the above things within 10 DAYS after receiving this notice, then upon written request from the plaintiff the clerk of the court will enter a judgment against you for the amount claimed plus a small claims fee, a service fee and mileage expense.

If you have questions about this notice, you should contact the clerk of the court immediately.

[1971 c.760 §6]

46.450 [Repealed by 1971 c.760 §11]

46.455 Defendant's rights and liabilities. The notice shall provide that within 10 days of service of the notice upon him:

(1) If the defendant admits the claim, he may settle it by paying the amount or delivering the property to the clerk and avoid having costs assessed against him.

(2) If the defendant denies the claim:

(a) He may demand a hearing in the small claims department in a written request to the clerk in the form prescribed by the court, accompanied by payment of the defendant's fee of $1; and

(b) When demanding a hearing, he may assert a counterclaim in the form provided by the court, accompanied by payment of the small claims fee prescribed for the amount or value claimed; or

(c) If the amount or value claimed exceeds $20, he has a constitutional right to a jury trial. He may claim his right in a written request to the clerk in the form prescribed by the court, accompanied by payment of the fees required from defendants in district court actions together with the district court jury fee. The request shall designate a mailing address to which a copy of the complaint may be served by mail. But thereafter, the plaintiff's claim will not be limited to the amount stated in the claim, though it must involve the same controversy.
[1971 c.760 §7]

46.460 [Amended by 1965 c.619 §24; 1969 c.683 §2; repealed by 1971 c.760 §11]

46.465 Time and place of hearing; notice; procedure if defendant claims jury trial. (1) If the defendant demands a hearing in the small claims department, under the direction of the court the clerk shall fix a day and time for the hearing and shall mail to the parties a notice of the hearing time in the form prescribed by the court, instructing them to bring witnesses, documents and other evidence pertinent to the controversy.

(2) If the defendant asserts a counterclaim, the notice of the hearing time shall contain a copy of the counterclaim.

(3) If the defendant claims his right to a jury trial, the clerk shall notify the plaintiff to file a formal complaint within 20 days following the mailing of such notice. The notice shall instruct the plaintiff to serve a copy of the complaint by mail on the defendant at his designated address and to attach an affidavit of such mailing to the complaint prior to its filing. The plaintiff's claim in such formal complaint is not limited to the

amount stated in the claim filed in the small claims department but it must involve the same controversy. The defendant shall have 10 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 cause shall proceed as other causes in the district court, and fees and costs shall be charged and collected as provided in ORS 46.210 and 46.221 for other cases tried in district court.
[1971 c.760 §8]

46.470 [Amended by 1963 c.248 §1; repealed by 1971 c.760 §11]

46.475 Time extension; default; dimissal; resetting claim for hearing. (1) Upon written request, the court may extend to the parties additional time within which to make formal appearances required in the small claims department.

(2) If the defendant fails to pay the claim, demand a hearing, or jury trial, upon written request from the plaintiff the clerk shall enter a judgment against the defendant for the relief claimed plus the small claims fee, the service fee and mileage expense.

(3) If the plaintiff fails within the time provided to file a formal complaint pursuant to subsection (3) of ORS 46.465, the clerk shall dismiss the case without prejudice.

(4) If the defendant appears at the time set for hearing but no appearance is made by the plaintiff the claim shall be dismissed with prejudice. If neither party appears, the claim shall be dismissed without prejudice.

(5) Upon good cause shown within 60 days, the court may set aside a default judgment or dismissal and reset the claim for hearing.
[1971 c.760 §9]

46.480 [Amended by 1969 c.683 §3; repealed by 1971 c.760 §11]

46.485 Extent and effect of small claim judgment. (1) In addition to other award, the prevailing party shall be entitled to a judgment for his small claims fee, service fee and mileage expense. The award shall be paid or the property delivered upon such terms and conditions as the judge may prescribe.

(2) The court may allow to the defendant a set-off not to exceed the amount of plaintiff's claim but in such case the court shall cause to be entered in the record the amount of the set-off allowed.

(3) No attachment shall issue on any cause in the small claims department.

(4) A judgment in the small claims department is conclusive upon the parties.

(5) The clerk of the district court shall keep a record of all actions, proceedings and judgments in the small claims department.

(6) A judgment in the small claims department is a judgment of the district court. The clerk shall enter such judgment 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.
[1971 c.760 §10]

46.490 [Repealed by 1971 c.760 §11]

46.500 [Amended by 1969 c.683 §4; repealed by 1971 c.760 §11]

46.505 [1969 c.683 §6; repealed by 1971 c.760 §11]

46.510 [Repealed by 1971 c.760 §11]

46.520 [Amended by 1969 c. 683 §7; repealed by 1971 c.760 §11]

46.530 [Repealed by 1971 c.760 §11]

46.540 [Amended by 1969 c.683 §8; repealed by 1971 c.760 §11]

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.

JUDGES

46.610 Qualifications of judges. (1) No person shall be eligible to the office of judge of the district court for a county having a population of 500,000 or more, according to the latest federal decennial census, 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) No person shall be eligible to the office of judge of the district court for a county having a population of less than 500,000, according to the latest federal decennial census, 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.
[Amended by 1965 c.510 §20]

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

46.630 Terms of judges; private practice of law prohibited. Except as provided in paragraph (b) of subsection (1) of ORS 46.026 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 shall not engage in the practice of law.
[Amended by 1957 c.726 §2; 1963 c.614 §2; 1969 c.96 §5]

46.632 Salary and expenses of judges. (1) Each judge of a district court shall receive such salary as is provided by law.

(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, 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, hotel bills and traveling expenses of circuit court judges.
[1959 c.559 §5; 1961 c.628 §1; 1963 c.487 §1; 1965 c.171 §2; 1967 c.38 §2; 1969 c.365 §2; 1971 c.642 §2]

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]

46.642 Judges pro tempore appointed by Supreme Court; compensation; effect on benefits of retired judge. (1) The Supreme Court may appoint any qualified person to serve as judge pro tempore of a district court.

(2) Except as otherwise provided in this section, the provisions of ORS 3.510 to 3.560 are applicable to such appointments and to district court judges pro tempore so appointed. In applying those provisions to such appointments and to district court judges pro tempore so appointed, references to judicial districts, circuit courts, circuit judges, regularly elected circuit judges, circuit judges pro tempore and county clerks shall be considered references to counties, district courts, district court judges, regularly elected district court judges, district court judges pro tempore and district court clerks, respectively.

(3) Each district court judge pro tempore shall receive as compensation for his services for each day he is actually engaged in the performance of his duties an amount equal to five percent of the gross monthly salary of a regular judge of the district court, or one-half of such daily compensation for service of one-half day or less.

(4) If a retired judge of the Supreme Court, circuit court or district court serves as district court judge pro tempore, neither such service nor the receipt of compensation therefor shall reduce or affect the amount of any retirement pay or benefit to which he otherwise would be entitled; but in no case shall a retired judge receive for his service as district court judge pro tempore during any calendar month, a sum which, when added to the amount of the retirement pay or benefit received by such judge for the month, exceeds the monthly salary of a regularly elected district court judge.
[1965 c.377 §1; 1969 c.269 §3; 1971 c.213 §3]

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 [Repealed by 1961 c.724 §34]

46.655 Departments of district court having two or more judges. In a district court having two or more judges there shall be a department for each judge of the district

court. The departments shall be designated by consecutive numbers, beginning with Department No. 1. Any successor to the judge in a department shall be elected or appointed as judge in and shall preside over the department.
[1961 c.724 §23]

46.660 [Repealed by 1961 c.724 §34

46.665 Presiding judge of district court having two or more judges. The judges of a district court having two or more judges shall choose one of their number to be presiding judge of the district court. The presiding judge at any time may be removed and another chosen in his place as the judges of the court agree among themselves. If the judges or a majority of them cannot agree, the circuit court for the county in which the district court is located shall designate one of the judges to act as presiding judge until such time as the judges or a majority of them can agree. During the temporary absence or disability of the presiding judge, one of the other judges designated by the presiding judge, or if there are only two judges, the other judge, may act as presiding judge.
[1961 c.724 §24]

46.670 [Repealed by 1969 c.96 §6]

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 [1957 c.405 §5; repealed by 1961 c.724 §34]

46.686 [1957 c.405 §6; repealed by 1961 c.724 §34]

46.690 [Repealed by 1959 c.552 §16]

CLERKS AND SECRETARIES

46.710 [Repealed by 1969 c.96 §6]

46.720 Clerks for district courts for counties other than Multnomah County. The county clerk in counties having a district court organized under ORS 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 amount of money prayed for in the complaint or counterclaim or, if the relief sought be other than a money judgment, a succinct condensation of the relief sought.

(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 brief statement to that effect.

(6) The date of the return of every writ or other process together with a brief statement of the substance thereof.

(7) The date of the making or entry of every order and a brief statement of the substance thereof.

(8) A brief statement of the relief granted on every judgment, including costs and disbursements.

(9) A brief statement of the substance 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 brief statement of the substance 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.

(15) Nothing contained in subsections

(1) to (14) of this section shall require or permit verbatim entries to be made in the docket of the district court unless the context of any such subsection so requires.
[Amended by 1955 c.664 §5; 1963 c.427 §1]

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 other than probate 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 either satisfied or has remained unsatisfied for a period of 10 years or longer prior to such destruction, or in the case of a renewed judgment which has remained unsatisfied for a period of 10 years or longer after such renewal.
[Amended by 1959 c.524 §1; 1963 c.474 §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.

46.780 Secretary for court; salary; ex officio deputy clerk. Each judge of a district court, whenever he deems it necessary or advisable, is authorized to select and appoint a secretary to serve the court. The judge shall determine and fix the term of employment. A reasonable salary for such secretary shall be set and paid out of the funds of the county by the county court or board of county commissioners. In addition to acting as secretary such person shall be an ex officio deputy clerk of the district court and shall perform the duties incumbent upon a clerk as well as other official duties to be designated by the judge.
[1965 c.203 §1]

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

CHAPTERS 47 TO 50

[Reserved for expansion]