Chapter 55

1971 REPLACEMENT PART

Small Claims

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CROSS REFERENCES

Administrative supervision by Supreme Court over other courts, 1.002
Small claims department of district court, 46.405

55.120
Deposit in lieu of bail or bond, Ch. 22

55.010 [Amended by 1955 c.44 §1; 1959 c.326 §2; repealed by 1963 c.404 §1 (ORS 55.011 enacted in lieu of ORS 55.010)]

55.011 Small claims department; jurisdiction. (1) In each justice court created under any law of this state there shall be a department to be known as the Small Claims Department of the Justice Court.

(2) All actions in the justice court for the recovery of money or damages only, where the amount claimed does not exceed $20, shall be commenced and prosecuted only in the small claims department; other actions for the recovery of money or damages only, where the amount claimed does not exceed $200, may be commenced and prosecuted in such department subject to the provisions of subsection (3) of this section.

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

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

(5) Except as provided in subsection (3) of this section, the provisions of ORS 55.020 to 55.140 shall apply with regard to proceedings in the small claims department of any justice court.

[1963 c.404 §2 (enacted in lieu of ORS 55.010); 1965 c.569 §2]

55.020 Commencement of action. Actions in the small claims departments shall be deemed commenced by the plaintiff appearing in person or by agent or assignee before the justice of the peace and subscribing to, verifying and filing a claim, as provided in this chapter.

55.030 Contents of claim. The claim shall contain the name of the plaintiff and the name of the defendant, followed by a statement, in brief and concise form, of the nature and amount of the claim and the time of its accrual and, if known to the plaintiff, the residence of the defendant, for the purpose of serving him with the notice of the claim.

55.040 Verification and prosecution of claim. All claims shall be verified by the real party in interest, his agent or assignee. Any claim may be filed and prosecuted in the small claims department by such agent or the assignee of the cause of action upon which recovery is sought.

55.050 Time for hearing; issuance of notice of claim; fee. Upon filing of the claim, the justice of the peace shall appoint a time for the hearing of the matter and shall issue a notice of the claim, as provided in this chapter, which shall be served upon the defendant. The justice of the peace shall collect in advance on each claim the same fee as collected in small claims departments of district courts under ORS 46.221, and this shall be the only fee for the justice of the peace to be charged or taxed against the plaintiff in the action during the pendency or disposition of the claim.

[Amended by 1965 c.619 §28]

55.060 Notice of claim; form and contents. The notice of claim shall be directed to the defendant, naming him, and shall contain a statement in brief and concise form notifying the defendant of the plaintiff's name and address, and the amount and nature of the alleged claim, and requiring the defendant to appear personally in court before the justice of the peace at a time certain, which shall not be less than five nor more than 10 days from the date of service of the notice. The notice shall further provide that in case of failure to so appear, judgment will be given against the defendant for the amount of the claim.

55.070 Service of notice of claim by officer or by registered mail; fees. The notice of claim shall be served by the officers provided for in ORS 52.120 or by registered

mail at the option of the justice of the peace in whose court the claim is filed.

(1) If served by an officer, the notice shall be served in the manner provided for in ORS 52.140, but no other paper is to be served with the notice. Except as may otherwise be provided in ORS 51.640, the officer serving the notice shall be entitled to receive from the plaintiff $1.25 for such service, which sum, together with the fee of the justice of the peace named in ORS 55.050, shall be added to any judgment given for plaintiff.

(2) If served by registered mail, the notice shall be placed in an envelope by the justice of the peace. The envelope shall be, by the justice of the peace, sealed and plainly addressed to the defendant at his last-known mail address within the jurisdiction of the justice court, and delivered to the postal authorities for transmittal to the defendant by registered mail. The envelope with the contents thereof shall be registered by the postal authorities at the place of mailing. The envelope shall have plainly marked thereon the words "Deliver to Addressee Only" and the words "Return Receipt Requested." The date of delivery appearing on the return receipt shall be prima facie evidence of the date the notice of claim was served on the defendant. The justice of the peace shall demand and receive from the plaintiff such sum as shall be required to pay all postal and registration fees, and this sum shall be added to any judgment given for plaintiff.

[Amended by 1957 c.6 §1; 1965 c.619 §29]

55.080 Formal pleadings and proceedings unnecessary; issuance of attachment, garnishment or execution; costs of execution taxable. No formal pleading, other than the claim and notice, shall be necessary to define the issue between the parties. The hearing and disposition of all actions shall be informal, the sole object being to dispense justice between the litigants promptly. No attachment, garnishment or execution shall issue from the small claims department on any claim except as provided in this chapter. Plaintiff's costs in securing and service of such execution shall be taxed against the defendant and recoverable as part of the judgment.

[Amended by 1971 c.179 §1]

55.090 Right of attorneys or persons not a party to appear; witnesses; disposition of controversy. Except as may otherwise be provided by ORS 55.040, no attorney at law nor any person other than the plaintiff and defendant shall concern himself or in any manner interfere with the prosecution or defense of the litigation in the department without the consent of the justice of the justice's court, nor shall it be necessary to summon witnesses. But the plaintiff and defendant may offer evidence in their behalf by witnesses appearing at the hearing, and the justice may informally consult witnesses or otherwise investigate the controversy and give judgment or make such orders as he deems right, just and equitable for the disposition of the controversy.

55.100 Payment of judgment against defendant. If the judgment or order is against the defendant, he shall pay the same forthwith upon the terms and conditions prescribed by the justice.

55.110 Conclusiveness of judgment upon the plaintiff; appeal by defendant; costs and fees on appeal. The judgment of the court shall be conclusive upon the plaintiff. If the defendant is dissatisfied, he may, within 10 days from the entry of the judgment against him, appeal to the circuit court of the county in which the justice's court is located. If final judgment is rendered against the defendant in the circuit court, he shall pay, in addition to the judgment, an attorney's fee to the plaintiff in the sum of $10. Appeals from the small claims department shall only be allowed in cases in which appeals would be allowed if the action were instituted and the judgment rendered in the justices' courts, as is provided by law.

55.120 Form of appeal; bond; proceedings in circuit court; no further appeal. (1) The defendant's appeal may be in the following form:

In the _____ Court for _____ District, _____ County, Oregon. _____, Plaintiff, vs. _____, Defendant. Comes now _____, a resident of _____ County, Oregon, and appeals from the decision of the small claims department of the justice's court for _____ District, _____ County, Oregon, wherein a judgment for _____ dollars was awarded against him on the _____ day of _____, 19__.

_____, Appellant.

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(2) All appeals shall be filed with the justice and accompanied by a bond, with satisfactory surety, to secure the payment of the judgment, costs and attorney's fees, as provided in ORS 55.110. The appeal shall be tried in the circuit court without any other pleadings than those required in the justice's court originally trying the cause. All papers in the cause shall be certified to the circuit court as is provided by law in other cases of appeals in civil actions in justices' courts. The circuit court may require any other or further statements or information it may deem necessary for a proper consideration of the controversy. The appeal shall be tried in the circuit court without the intervention of a jury. There shall be no appeal from any judgment of the circuit court rendered upon the appeal, but such judgment shall be final and conclusive.

55.130 Enforcement of judgment when no appeal is taken; fees. (1) If no appeal is taken by the defendant and he fails to pay the judgment according to the terms and conditions thereof, the justice before whom the hearing was had, may, on application of the plaintiff, certify the judgment in substantially the following form:

In the Justice Court for _____ District, _____ County, Oregon.

_____ _____
Plaintiff,
vs.
_____ _____
Defendant.

In the Small Claims Department

This is to certify that in a certain action before me, the undersigned, had on this, the _____ day of _____, 19__, wherein _____ was plaintiff and _____ was defendant, jurisdiction of the defendant having been had by personal service (or otherwise), as provided by law, I then and there entered judgment against the defendant in the sum of _____ dollars, which judgment has not been paid.

Witness my hand this _____ day of _____, 19__.

_____ _____,
Justice of Peace Sitting in
the Small Claims Department.

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(2) Upon the payment of a fee of $1.50 the justice of the peace shall forthwith enter the judgment transcript on the docket of the justice court. Thereafter execution and other process on execution provided by law may issue thereon as in other cases of judgments of justices' courts, and transcripts of the judgments may be filed and entered in judgment dockets in circuit courts with like effect as in other cases.
[Amended by 1965 c.619 §30]

55.140 Separate docket for small claims department. Each justice of the peace shall keep a separate docket for the small claims department of his court, in which he shall make a permanent record of all proceedings, orders and judgments had and made in the small claims department.

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