

Chapter 55

1979 REPLACEMENT PART

Small Claims

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CROSS REFERENCES

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55.010 [Amended by 1955 c.44 §1; 1959 c.326 §2, repealed by 1963 c.404 §1 (55.011 enacted in lieu of 55.010)]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, excepting class actions and actions providing for statutory attorney fees, where the amount claimed does not exceed \$200, 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 \$500, may be commenced and prosecuted in such department subject to the provisions of subsection (3) of this section.

(3) If the amount claimed exceeds \$200, 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 and to mail a copy of the complaint to the defendant at the designated address. Proof of service of the complaint copy may be made by certificate of the plaintiff or his attorney attached 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 55.010); 1965 c.569 §2; 1973 c.625 §3, 1973 c.812 §7; 1975 c.346 §2a; 1975 c.592 §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 and address 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. The claim shall include an affidavit signed by the plaintiff and stating that he made a bona fide effort to collect the claim from the defendant before filing the claim with the justice of the peace. [Amended by 1977 c.875 §11]

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; fee; appearance of defendant; effect of failure to appear. (1) 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, which shall be served upon the defendant. The time for the hearing shall not be less than five nor more than 10 days after the date of service of the notice.

(2) The justice of the peace shall collect in advance from a plaintiff filing a claim the same small claims fee as collected in small claims departments of district courts pursuant to subsection (1) of ORS 46.435.

(3) If the notice of claim is served upon the defendant, the defendant shall appear personally in court before the justice of the peace at the time appointed by the justice of the peace for the hearing and specified in the notice. If the defendant fails to so appear, the justice of the peace shall enter a judgment against the defendant for the amount claimed plus the small claims fee and service expenses paid by the plaintiff. [Amended by 1965 c.619 §28; 1977 c.875 §12]

55.055 Explanation to plaintiff of how notice may be served. The justice of the peace shall provide to each plaintiff who files a claim with the small claims department of his court a written explanation of how notice may be served in actions in the department. [1977 c.875 §21]

55.060 Notice of claim; form. (1) The notice of claim shall be directed to the defendant, naming him, and shall contain a copy of the claim.

(2) The notice shall include a statement in substantially the following form:

NOTICE TO DEFENDANT:

READ THESE PAPERS
CAREFULLY!

You must appear personally in court before the justice of the peace at ____m., on ____, 19___. The court is located at _____.

If you fail to appear, the justice of the peace will enter a judgment against you for the amount claimed plus fees and service expenses paid by the plaintiff.

If you have questions about this notice, you should contact the justice of the peace immediately.

[Amended by 1977 c.875 §13]

55.070 Service of notice; fees. (1) The notice of claim shall be served upon the defendant either by a person provided for in ORS 52.120 or by certified mail, at the option of the justice of the peace.

(2) If served by a person provided for in ORS 52.120, the notice shall be served in the manner provided for in ORS 52.120, but no other paper is to be served with the notice. The person serving the notice shall be entitled to receive from the plaintiff compensation for such service as prescribed by ORS 52.120, which shall be added to any judgment given for plaintiff.

(3) If service by certified mail is attempted, the justice of the peace shall mail the notice by certified mail addressed to the defendant at the last-known mailing address of the defendant within the territorial jurisdiction of the justice court. The envelope shall be marked with the words "Deliver to Addressee Only" and "Return Receipt Requested." The date of delivery appearing on the return re-

ceipt shall be prima facie evidence of the date on which the notice was served upon the defendant. The justice of the peace shall collect from the plaintiff the sum required to pay the expenses of service by certified mail, which shall be added to any judgment given for plaintiff. If service by certified mail is not successfully accomplished, the notice shall be served by a person as provided in subsection (2) of this section. [Amended by 1957 c.6 §1; 1965 c.619 §29; 1973 c.393 §3; 1977 c.875 §14; 1977 c.877 §14a; 1979 c.284 §87]

55.080 Formal pleadings unnecessary; issuance of attachment, garnishment or execution; costs of execution taxable. No formal pleading, other than the claim and notice, shall be necessary. 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. A prevailing party's costs in securing and service of such execution shall be taxed against the other party and recoverable as part of the judgment. [Amended by 1971 c.179 §1; 1977 c.875 §15]

55.090 Right of attorneys or persons not a party to appear; witnesses; disposition of controversy; appearance by attorney not required for certain parties. (1) 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.

(2) Notwithstanding ORS 9.320, a corporation, 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 department without appearance by attorney. [Amended by 1973 c.625 §4]

55.095 Counterclaim; procedure; fee; transfer of jurisdiction. (1) The defendant in an action in the small claims department may,

at the time the claim filed by the plaintiff is called for hearing, assert as a counterclaim any claim that, on the date of issuance of notice pursuant to ORS 55.050, the defendant may have against the plaintiff and that arises out of the same transaction or occurrence that is the subject matter of the claim filed by the plaintiff.

(2) If the defendant asserts a counterclaim as provided in subsection (1) of this section:

(a) The defendant shall file the claim with the justice of the peace in the form provided by the justice of the peace, accompanied by payment of the same small claims fee as collected in small claims departments of district courts pursuant to subsection (1) of ORS 46.435.

(b) The defendant shall give a copy of the claim to the plaintiff.

(c) Upon the request of the plaintiff, the justice of the peace shall postpone the hearing until a time certain, but not more than 10 days after the date of the hearing at which the counterclaim is asserted.

(3) If the amount of the counterclaim asserted by the defendant exceeds \$500, the case shall be transferred from the small claims department to the court of appropriate jurisdiction and the defendant shall pay the costs of the transfer. After the transfer the plaintiff's claim will not be limited to the amount stated in the claim filed with the justice of the peace, though it must involve the same controversy. [1977 c.875 §22]

55.100 Payment of judgment. If the judgment is against a party to make payment, he shall pay the same forthwith upon the terms and conditions prescribed by the justice of the peace. [Amended by 1977 c.875 §16]

55.110 Conclusiveness of judgment; appeal; costs and fees on appeal. The judgment of the court shall be conclusive upon the plaintiff in respect to the claim filed by him and upon the defendant in respect to a counterclaim asserted by him. If the defendant is dissatisfied in respect to the claim filed by the plaintiff or the plaintiff is dissatisfied in respect to a counterclaim asserted by the defendant, 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 party appealing in the circuit court, he shall pay, in addition to the

judgment, an attorney's fee to the other party 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. [Amended by 1977 c.875 §17]

55.120 Form of appeal; bond; proceedings in circuit court; no further appeal. (1) The appeal from the small claims department may be in the following form:

In the _____ Court for _____
District, _____ County, Oregon.
_____, Plaintiff, vs. _____, Defen-
dant. Comes now _____, a resident of _____
County, Oregon, and appeals from the deci-
sion 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.

(2) All appeals shall be filed with the justice of the peace 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. [Amended by 1977 c.875 §18]

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

In the Justice Court for _____ Dis-

trict, _____ 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 or plaintiff) in the sum of ___ dollars, which judgment has not been paid.

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

Justice of the Peace Sitting in the Small
Claims Department.

(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; 1977 c.875 §19]

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, Thomas G. Clifford, 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,
October 1, 1979.

Thomas G. Clifford
Legislative Counsel