TITLE 5

DISTRICT COURTS AND PROCEEDINGS THEREIN

Chapter 46. District Courts and Proceedings Therein

Chapter 46

1981 REPLACEMENT PART

District Courts and 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 14 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 City of Gresham and Multnomah County may enter into a cooperative agreement for providing a clerk and other court employes. [Amended by 1961 c 724 §16, 1965 c 510 §13, 1965 c 568 §1, 1967 c 575 §1, 1971 c 633 §4; 1973 c 645 §1, 1977 c 387 §1, 1981 c 759 §11]

Note: The amendments to 46 010 by section 31, chapter 3, Oregon Laws 1981 (special session), become operative January 1, 1983 See section 5, chapter 3, Oregon Laws 1981 (special session). 46 010, as amended, is set forth for the users' convenience

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46.019 Union and Wallowa, Crook and Jefferson, and Morrow and Umatilla Counties District Courts. (1) There shall be a court styled "The District Court of the State of Oregon, for the Counties of Union and Wallowa " The court shall be considered to be located in the cities that are the county seats of Union and Wallowa Counties. The court shall have one judge, who shall hold court in the City of Enterprise in Wallowa County at least one day a week and in the City of La Grande in Union County the rest of the week.

(2) There shall be a court styled "The District Court of the State of Oregon, for the Counties of Crook and Jefferson." The court shall be considered to be located in the cities that are the county seats of Crook and Jefferson Counties. The court shall have one judge, who shall hold court in the City of Prineville in Crook County the equivalent of at least two and one-half days a week and in the City of Madras in Jefferson County the equivalent of at least two and one-half days a week.

(3) There shall be a court styled "The District Court of the State of Oregon, for the Counties of Morrow and Umatilla." The court shall be considered to be located in the city that is the county seat of Morrow County and in the City of Hermiston in Umatilla County. The court shall have one judge, who shall hold court in the City of Heppner in Morrow County at least one day a week and in the City of Hermiston in Umatilla County the rest of the week. Organization of the court under this subsection does not affect the district court for Umatilla County organized under ORS 46.025 and, notwithstanding ORS 51.020, does not affect the justice's court in, or the justice of the peace district including, the City of Heppner. [1975 c 327 §§2, 4, 1979 c 568 §1]

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

46.025 District courts in other counties; 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 203.770.

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

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

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

(c) The court for Deschutes County shall have two judges.

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

(e) The court for Jackson County shall have three judges.

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

(g) The court for Klamath County shall have two judges.

(h) The court for Lane County shall have five judges.

(i) The court for Linn County shall have two judges.

(j) The court for Marion County shall have three judges.

(k) The court for Washington County shall have four 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; 1975 c.327 §1; 1977 c 385 §1; 1979 c.568 §12, 1981 c 253 §1, 1981 c 759 §13]

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 boundaries of the county or counties 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, 1979 c 568 §6]

46.040 Jurisdiction, criminal; concurrent jurisdiction with municipal courts. Except as is otherwise provided in ORS 3.150, 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. District courts shall have concurrent jurisdiction with municipal courts of all violations of the charter and ordinances of any city wholly or in part within their respective counties, committed or triable within their respective counties. [Amended by 1963 c 513 §2; 1971 c 743 §311; 1973 c 645 §2]

46.045 Jurisdiction, violations of Portland charter and ordinances, certain cities; disposition of moneys. (1) The district court for a county within the boundaries of which there is situated the largest part of a city having a population of more than 300,000 shall have all judicial jurisdiction, authority, powers, functions and duties of the municipal court of each such city and the judges thereof with respect to all violations of the charter and ordinances of each such city.

(2) All fees, fines, bail forfeitures and other moneys collected and received by a district court in matters, causes and proceedings with respect to all violations over which such district court is granted judicial jurisdiction by subsection (1) of this section shall be collected, handled and disposed of by the clerk of such district court as otherwise provided by law for moneys collected and received by such district court. [1971 c 633 §2]

46.047 Application of state statutes to municipal ordinance. When an offense defined by municipal ordinance is tried in district court, it shall be subject to the same statutes and procedures that govern the trial and appeal of a like offense defined by a statute of this state. [1975 c.611 §15]

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) Except as provided in subsection (2) of this section, the district courts shall have exclusive jurisdiction in the following cases:

(a) For the recovery of money or damages only when the amount claimed does not exceed $3,000. When, in such a case arising out of contract, the ends of justice demand that an account be taken or that the contract 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 $3,000.

(c) For the recovery of any penalty or forfeiture, whether given by statute or arising out of contract, not exceeding $3,000.

(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 $3,000, 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 $3,000.

(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) The jurisdiction granted the district court in subsection (1) of this section does not affect the jurisdiction of any justice court, and in a county with no district court, the circuit court has jurisdiction to hear all matters otherwise assigned to the district court.

(3) Whenever an action or proceeding is brought in a district court, the court shall have jurisdiction to hear and determine, pre-

serve 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.

(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, 1975 c 611 §18]

46.063 Court of Appeals to decide jurisdictional disputes. (1) In any case where there is a dispute as to whether jurisdiction is in district court or some other court, the court before which the matter is pending shall refer the question to the Court of Appeals which shall decide the question of jurisdiction in a summary manner. The decision of the Court of Appeals on a question of jurisdiction shall be final.

(2) No case filed in any trial court shall be dismissed solely for having been filed in the wrong court, but shall be considered timely filed in the court determined by the Court of Appeals to have jurisdiction. [1975 c.611 §10]

Note: 46 063 was enacted into law by the Legislative Assembly but was not added to or made a part of 46 060 to 46 080 by legislative action See the Preface to Oregon Revised Statutes for further explanation

46.065 [1965 c 495 §3, repealed by 1975 c 611 §24]

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 $3,000. [Amended by 1965 c 495 §2; 1975 c.611 §19]

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 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 the clerk 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 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, 1981 c.898 §39]

46.082 Real property not subject to writ of attachment. Real property or any interest therein cannot be attached upon a writ of attachment in a civil action in a district court. [1977 c.876 §5]

46.084 Title to real property not affected by action. While the title to real property may be controverted or questioned in an action in district court, the judgment in said action shall in no way affect or determine title between the parties or otherwise. [1977 c 876 §6]

46.090 [Amended by 1955 c 664 §1; 1957 c.661 §3; repealed by 1977 c.876 §12]

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 203.770, 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 [Amended by 1967 c 391 §1; repealed by 1979 c.284 §199]

46.120 [Amended by 1953 c 479 §4; 1973 c.827 §9; repealed by 1977 c 877 §17]

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 (46.141 enacted in lieu of 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 anoth-

er 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 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]

46.155 [1975 c 611 §§12, 13, 14, repealed by 1979 c 284 §199]

46.160 [Repealed by 1979 c 284 §199]

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. (1) When, in any 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.

(2) In the case of jurors required by the district court in the City of Gresham as specified in ORS 46.010, the jurors needed by said court may be drawn from a list of eligible jurors who reside east of 122nd Avenue extended to the north and south boundaries of Multnomah County. The management and compensation of such jurors shall be the responsibility of the clerk of the district court. The clerk of the circuit court may assist said clerk in the selection of the jury list. [1961 c 705 §3, 1965 c 510 §16, 1971 c 628 §1, 1979 c 113 §1]

Note: 46 175 is repealed operative January 1, 1983 See sections 5 and 141, chapter 3, Oregon Laws 1981 (special session)

46.180 Juries in district courts generally. (1) In the district court 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 shall consist of six jurors of like qualification as jurors in the circuit court. Jurors shall be drawn 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, 1977 c 519 §3]

Note: The amendments to 46 180 by section 61, chapter 3, Oregon Laws 1981 (special session), become operative January 1, 1983 See section 5, chapter 3, Oregon Laws 1981 (special session) 46 180, as amended, is set forth for the users' convenience

46.180. (1) In the district court 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 shall consist of six jurors of like qualification as jurors in the circuit court Jurors shall be drawn as provided in ORS 10 220, and shall be subject to all applicable laws relating to jurors in the circuit court, including compensation and manner of payment Jurors required in proceedings in the district court for Multnomah County holding court in the City of Gresham as provided in ORS 46 010 may be drawn from names of qualified persons on the jury list who reside east of 122nd Avenue extended to the north and south boundaries of Multnomah County

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 [Amended by 1961 c 446 §2, 1969 c 96 §3; 1971 c 565 §16, repealed by 1975 c.611 §24]

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 al-

lowed 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 this chapter. 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 the district court there shall be charged and collected in civil cases by the clerk of the court the following fees for the following purposes and services:

(a) Appearance for plaintiff, $22.50 beginning November 1, 1981, and $26 beginning September 1, 1982.

(b) Appearance for defendant appearing separately or for defendants appearing jointly, $10 beginning November 1, 1981, and $12.50 beginning September 1, 1982.

(c) Trial fee, for a trial on the merits without a jury, $9 beginning November 1, 1981, and $11 beginning September 1, 1982, for each full or partial day of the trial.

(d) Jury trial fee, for a trial by jury, $32.50 beginning November 1, 1981, and $36 beginning September 1, 1982, for the first full or partial day of the trial and $25 for each subsequent full or partial day of the trial.

(e) Transcript of judgment in the format provided in ORCP 70 A. issued, $4.

(f) Transcript of judgment in the format provided in ORCP 70 A. with triplicate certificate attached issued, $6.

(g) Transcript on appeal issued, $4.

(h) Transcript of judgment in the format provided in ORCP 70 A. filed, $4.

(i) In small claims department, plaintiff filing a claim, $7; and defendant demanding a hearing, $7.

(j) Transcript of judgment in the format provided in ORCP 70 A. from small claims department, $4.

(k) Taking any affidavit, $2.

(L) Preparing certification to circuit court on counterclaims, $8.

(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 determined under ORS 21.350 for district courts.

(2) The trial fee provided for in paragraph (c) of subsection (1) of this section shall be collected and considered as disbursements as provided in ORS 21.270 for the trial fee in the circuit court.

(3) The jury trial fee provided for in paragraph (d) of subsection (1) of this section shall be collected and considered as disbursements as provided in ORS 21.270 for the jury trial fee in the circuit court.

(4) Except as provided in subsections (2) and (3) of this section, fees provided for in this section shall be collected in advance. Fees collected under this section shall promptly be paid into the county treasury. [1953 c.393 §1, 1965 c.510 §18, 1965 c 619 §22, 1971 c 621 §8, 1973 c 381 §2; 1975 c 88 §6, 1975 c 327 §6, 1975 c 607 §11; 1977 c 875 §1; 1979 c 833 §12; 1981 c.898 §40, 1981 s s c 3 §92]

Note: The amendments to 46 221 by section 93, chapter 3, Oregon laws 1981 (special session), become operative January 1, 1983 See section 5, chapter 3, Oregon Laws 1981 (special session) 46 221, as amended, is set forth for the users' convenience

46.221. (1) In the district court there shall be charged and collected in civil cases by the clerk of the court the following fees for the following purposes and services

(a) Appearance for plaintiff, $37 beginning January 1, 1983, and $45 beginning September 1, 1983.

(b) Appearance for defendant appearing separately or for defendants appearing jointly, $18.50 beginning January 1, 1983, and $22.50 beginning September 1, 1983.

(c) Trial fee, for a trial on the merits without a jury, $11 beginning January 1, 1983, and $12.50 beginning September 1, 1983, for each full or partial day of the trial.

(d) Jury trial fee, for a trial by jury, $36 beginning January 1, 1983, and $40 beginning September 1, 1983, for the first full or partial day of the trial and $25 for each subsequent full or partial day of the trial.

(e) Transcript of judgment in the format provided in ORCP 70 A. issued, $4.

(f) Transcript of judgment in the format provided in ORCP 70 A. with triplicate certificate attached issued, $6.

(g) Transcript on appeal issued, $4.

(h) Transcript of judgment in the format provided in ORCP 70 A. filed, $4.

(i) In small claims department, plaintiff filing a claim, $18 beginning January 1, 1983, and $22 beginning September 1, 1983; and defendant demanding a hearing, $13 begin-

ning January 1, 1983, and $14.50 beginning September 1, 1983.

(j) Transcript of judgment in the format provided in ORCP 70 A. from small claims department, $4.

(k) Preparing certification to circuit court on counterclaims, $8.

(2) The trial fee provided for in paragraph (c) of subsection (1) of this section shall be collected and considered as disbursements as provided in ORS 21.270 for the trial fee in the circuit court.

(3) The jury trial fee provided for in paragraph (d) of subsection (1) of this section shall be collected and considered as disbursements as provided in ORS 21.270 for the jury trial fee in the circuit court.

(4) Except as provided in subsections (2) and (3) of this section, fees provided for in this section shall be collected in advance. Fees collected under this section shall be paid to the Department of Revenue and deposited in the General Fund available for general governmental expenses.

Note: Section 91, chapter 3, Oregon Laws 1981 (special session), which takes effect November 1, 1981 (section 146, chapter 3), and which is repealed January 1, 1983 (section 141, chapter 3), provides as follows.

Sec. 91. (1) There shall be collected by the clerk of the court at the time of filing of any civil action or proceeding in the district court, including actions in the small claims department, a fee of $7.50 beginning on the effective date of this 1981 special session Act, and $11 beginning September 1, 1982, in addition to all other fees; and from each defendant appearing or demanding a hearing separately, or from defendants appearing or demanding a hearing jointly, in any such action or proceeding, a fee of $4 beginning on the effective date of this 1981 special session Act, and $6 beginning September 1, 1982, in addition to all other fees.

(2) On the first working day of each month, the clerk shall forward all money collected under subsection (1) of this section during the preceding month to the Department of Revenue, with a detailed statement showing the purposes for which the fees were paid. The money shall be deposited in the General Fund and become available for general governmental expenses.

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

46.240 [Amended by 1961 c.563 §3; 1971 c 621 §9; repealed by 1973 c.381 §8]

46.250 Appeal to Court of Appeals. (1) Any party to a judgment or decree in a civil action or proceeding, including those relating to a traffic infraction, in a district court, other than a judgment or decree given by confession or for want of an answer or a judgment in the small claims department, may appeal therefrom to the Court of Appeals. The plaintiff may appeal from a judgment or decree given by confession or for want of an answer where the judgment or decree is not in accordance with the relief demanded in the complaint. Except for a traffic infraction case, an appeal may be taken only when the amount of money or the value of the property involved, exclusive of costs and disbursements, is more than $250. The party appealing is known as the appellant and the adverse party as the respondent, but the title of the action or proceeding is not thereby changed.

(2) For the purpose of appeal therefrom, the following are considered judgments or decrees of a district court:

(a) An order affecting a substantial right and which in effect determines the action or proceeding so as to prevent a judgment or decree therein.

(b) An order affecting a substantial right and made in an action or proceeding after judgment or decree.

(c) An order setting aside a judgment and granting a new trial.

(3) An appeal shall be taken by filing a written notice with the Clerk of the Court of Appeals within 30 days after the entry of the judgment or decree. Where any party has filed a motion for a new trial or for a judgment notwithstanding the verdict, the notice shall be filed within 30 days from the earlier of either the date of entry of the order disposing of the motion or the date the motion is considered denied. The notice shall be served on the adverse party, or his attorney, and the original notice with proof of service indorsed thereon filed with the Clerk of the Court of Appeals. A copy of the notice shall be served on the clerk of the district court. A written acknowledgment of service by the respondent or his attorney indorsed on the notice of appeal shall be sufficient proof of service.

(4) (a) Concurrent with the filing of the notice, the appellant shall file an undertaking with the clerk of the district court. The undertaking must be given with one or more sureties to the effect the appellant will pay all damages, costs and disbursements that may be awarded against him on appeal. The undertaking does not stay the proceedings unless it further provides that the appellant will satisfy any judgment that may be against him on appeal. Within five days after the filing of the undertaking the adverse party or his attorney

may except in district court to the sufficiency of the sureties in the undertaking or he shall be considered to have waived his right thereto.

(b) The court may waive, reduce or limit the undertaking provided for in this section upon a showing of good cause, including indigency, and on such terms as shall be just and equitable.

(5) Immediately upon service of the copy of the notice of appeal the clerk of the district court shall notify the district court reporter who shall authenticate and deposit the transcript with the clerk.

(6) Except as otherwise required by this chapter, an appeal taken from district court shall be in accordance with and subject to the provisions of ORS 19.005 to 19.026 and 19.029 to 19.200. [Amended by 1975 c.611 §20, 1977 c 416 §7; 1979 c 562 §34]

46.253 Jurisdiction of Court of Appeals. (1) The Court of Appeals has jurisdiction over a case when the notice of appeal is delivered in accordance with ORS 46.250. The serving and filing of the notice of appeal is jurisdictional and cannot be waived or extended.

(2) The district court, at any time before the record of the case is filed as provided in ORS 46.250, may dismiss the appeal on motion based upon stipulation of the parties. If the dismissal is ordered by the district court, the clerk shall send a certified copy of the order to the Clerk of the Court of Appeals. [1975 c 611 §5]

46.255 Power of Court of Appeals on appeals from district courts. (1) Upon an appeal under ORS 46.250 from a district court, the Court of Appeals may affirm, reverse or modify the judgment or decree appealed from or may order a new trial.

(2) The decision of the Court of Appeals shall include its judgment, shall state the disposition of the judgment, order or determination appealed from, and may provide for final disposition of the cause. The date of the filing of the decision shall be deemed to be the date of entry of the judgment, except that the judgment of the Court of Appeals shall be stayed until the expiration of the time provided in ORS 2.520 for filing a petition for review to the Supreme Court and thereafter as provided in the rules of the Supreme Court, and the judgment of the Supreme Court shall be stayed in accordance with the rules of the Supreme Court. The State Court Administrator shall mail a copy of the appellate court decision, or such part thereof as may be required by the rules of the Supreme Court, to the court below as soon as possible after the date when the decision is no longer stayed.

(3) If a new trial is ordered, upon the receipt of the decision by the clerk of the district court, the decision shall be entered in the docket of the district court and thereafter the cause is considered pending for trial in the district court, according to the direction of the Court of Appeals. If a new trial is not ordered, upon receipt of the decision by the clerk of the district court, a judgment or decree shall be entered in the docket, according to the direction of the Court of Appeals, in like manner and with like effect as if the judgment or decree was given in the district court.

(4) If judgment or decree is given against the appellant, it shall be entered against the sureties of the appellant also, in like manner and with like effect, according to the nature and extent of their undertaking.

(5) Except as provided in ORS 18.350, an appeal does not discharge the lien of a judgment or decree and, unless it is reversed, the lien thereof is merged and continued in the affirmed or modified judgment or decree given on appeal, from the time the judgment or decree attains lien status.

(6) Unless otherwise ordered by the Court of Appeals, the original papers relating to the cause and the appeal filed with the Clerk of the Court of Appeals shall be returned to the clerk of the district court after the appeal has been disposed of, but transcripts shall remain on file with the Clerk of the Court of Appeals. [1975 c 611 §6; 1981 c 178 §3]

46.260 [Amended by 1969 c 96 §4, repealed by 1977 c 290 §5]

46.265 Appeal to Supreme Court from Court of Appeals. A party aggrieved by a final decision of the Court of Appeals in a case from the district court may petition the Supreme Court for review of that decision in the manner provided for petitions of review. [1975 c 611 §7]

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 $5, 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 ORS 46.740 (1), (3), (5), (8), (9), (10), (11) and (12). 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, 1975 c.607 §12; 1979 c.833 §13; 1981 c 835 §3]

Note: The amendments to 46 274 by section 32, chapter 3, Oregon Laws 1981 (special session), become operative January 1, 1983 See section 5, chapter 3, Oregon Laws 1981 (special session) 46 274, as amended, is set forth for the users' convenience

46.274. 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 $5, file with the clerk of the circuit court for 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 ORS 46 740 (1), (3), (5), (8), (9), (10), (11) and (12) Thereupon the clerk shall docket in the judgment docket of the circuit court the judgment given in the district court

46.275 Filing transcript of judgment in other courts; execution. The party entitled to a judgment in district court may at any time have a certified transcript of the judgment and file it with any district court in any other county. Upon filing of the transcript, the clerk with whom it is filed must make an entry thereof in his docket, giving the title of the cause, the name of the parties, and the substance of the judgment. Thereafter execution may be issued to enforce the judgment or any part thereof remaining unsatisfied as if it were given by the district court with whom the transcript was filed. [1977 c.876 §7]

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]

46.278 Execution of judgment not issued against real property until judgment docketed in circuit court. Execution to enforce a judgment in a district court must not be issued against or levied upon the real property of the defendant; but when a judgment given by a district court has been duly docketed in the circuit court, thereafter it may be enforced as a judgment of such circuit court. [1977 c 876 §8]

46.280 Rules of court. A district court may make and enforce all rules necessary for the prompt and orderly dispatch of the business of the court and not inconsistent with applicable rules made or orders issued by the Chief Justice of the Supreme Court or the presiding judge of the district court. If a majority of the judges of a court having two or more judges do not agree in respect to the making of rules under this section, the deci-

sion of the presiding judge shall control. [Amended by 1973 c 484 §5, 1981 s s c 1 §11]

Note: the amendments to 46 280 by section 11, chapter 1, Oregon Laws 1981 (special session), take effect July 1, 1982 See section 26, chapter 1, Oregon Laws 1981 (special session) 46 280 (1979 Replacement Part) is set forth for the users' convenience

46.280. 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 All forms of pleadings used in a district court shall comply with the rules adopted under ORS 1 002

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

Note: 46 290 is repealed operative January 1, 1983 See sections 5 and 141, chapter 3, Oregon Laws 1981 (special session)

46.300 Holding court outside city where court located. The Supreme Court may direct district court judges to hold court at suitable places outside the city where the district court is located 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 for district court judges to hold court. [1959 c.552 §11, 1971 c 718 §3, 1979 c 568 §7]

DISTRICT COURT AS COURT OF RECORD

46.330 District court as court of record. Subject to the provisions of this chapter, a district court is a court of record. [1975 c 611 §2]

46.335 Report of proceedings; exceptions; waiver. (1) All proceedings in district court shall be reported unless waived by the parties, except that proceedings in small claims actions and arraignments in violations and traffic infractions, including pleas and sentences thereon, need not be reported if a suitable record is otherwise maintained in accordance with rules of the Court of Appeals.

(2) Waiver of reporting in criminal cases or failure to make timely written request in accordance with local district court rule for reporting civil, violation and traffic infraction cases constitutes waiver of the right to appeal issues not otherwise preserved in the record. [1975 c 611 §3, 1977 c 876 §2]

46.340 When record to be prepared; form; rules of Court of Appeals; appeal on record. (1) Upon service of a copy of the notice of appeal, the district court clerk shall prepare the record. The record shall include a copy of all the material entries in the docket of the district court relating to the cause and the appeal, and all the original papers relating to the cause and the appeal and filed with the district court. The record may include designated exhibits and the transcript of the proceedings in the district court. Upon the request of the Clerk of the Court of Appeals, the district court clerk shall deliver the record of the case.

(2) Unless some other form of reporting is specifically authorized by order of the Supreme Court, reporting in district court shall be by an audio record reporting device designated by the Supreme Court and operated under such rules as that court may prescribe. The transcript of proceedings reported in this manner shall be the audio record.

(3) The Court of Appeals shall make rules governing:

(a) Extensions of time for the performance of any act in connection with the preparation of the record.

(b) The filing of transcripts from the district court and their preparation, availability, distribution and charges therefor. Charges shall be reasonably commensurate with the cost incurred.

(c) Procedures for challenging the transcript.

(d) An agreed narrative statement in lieu of or in addition to a transcript.

(e) Procedures for filing written briefs.

(f) Presentation of oral argument.

(4) The appeal shall be heard and determined by the Court of Appeals on the record. Upon an appeal from a judgment in a case in which the right to jury trial is provided by Oregon law, the judgment shall be reviewed only as to questions of law appearing upon the record and shall be reversed or modified only for error substantially affecting the rights of the parties. Upon an appeal from a judgment

in a case in which no right to jury trial is provided by Oregon Law, the action shall be tried anew upon the record. Upon an appeal from a decree, the suit shall be tried anew upon the record. [1975 c 611 §4]

46.345 District court reporter; appointment; duties; compensation; fees. (1) If the Supreme Court specifically orders that a district court report its proceedings by court stenographer, then the judge of the district court shall appoint a reporter who shall take the same oath and perform the same duties in the district court as is provided by statute for the circuit court reporter. Such a reporter shall receive the same compensation as is provided by statute respecting the circuit court reporter.

(2) When district court proceedings are reported by an audio record reporting device, the district court reporter is the person operating the device during the proceedings. The duties of court reporter may be in addition to other duties of the person serving as reporter.

(3) The governing body of the county shall pay out of the funds of the county such amounts as will reasonably compensate a district court reporter. Except as provided in subsection (1) of this section, ORS 8.010 to 8.160, 8.310 to 8.660 and 8.670 to 8.850 relating to circuit court reporters shall not apply to district court reporters.

(4) In civil cases the clerk of the district court is authorized to collect from the parties to a proceeding a total fee of $10 for each day or part thereof during which a record of the proceedings is kept with an audio reporting device. Where both parties have requested the reporting, the fee will be shared evenly. Where one party is willing to waive reporting, the fee will be paid fully by the party requesting the reporting. [1975 c 611 §§8, 9]

Note: The amendments to 46 345 by section 33, chapter 3, Oregon Laws 1981 (special session), become operative January 1, 1983. See section 5, chapter 3, Oregon Laws 1981 (special session) 46.345, as amended, is set forth for the users' convenience

46.345. (1) If the Supreme Court specifically orders that a district court report its proceedings by court reporter, a reporter shall be appointed under a personnel plan established by the Chief Justice of the Supreme Court, and shall perform the same duties in the district court as provided by law for the circuit court reporter

(2) When district court proceedings are reported by an audio record reporting device, the district court reporter shall operate the device during the proceedings The duties of court reporter may be in addition to other duties of the person serving as reporter

(3) In civil cases the clerk of the district court is authorized to collect from the parties to a proceeding a total fee of $10 for each day or part thereof during which a record of the proceedings is kept with an audio record reporting device Where both parties have requested the reporting, the fee will be shared evenly Where one party is willing to waive reporting, the fee will be paid fully by the party requesting the reporting

46.350 Retention of transcripts. The district court shall retain transcripts of civil trials until the right to appeal has ended. In criminal proceedings the district court shall retain the transcript as provided by rule of the Court of Appeals. [1975 c 611 §11]

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, excepting class actions and actions providing for statutory attorney fees, where the amount or value claimed does not exceed $200, shall be commenced and prosecuted only in the small claims department. Where the amount or value claimed does not exceed $700, such actions may be commenced and prosecuted in the small claims department. [1971 c 760 §2, 1973 c 812 §2, 1975 c 592 §1, 1979 c 567 §1]

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.

(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 the judge 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, 1973 c 484 §6, 1981 s s c.1 §22]

Note: The amendments to 46 415 by section 22, chapter 1, Oregon Laws 1981 (special session), take effect July 1, 1982 See section 26, chapter 1, Oregon Laws 1981 (special session) 46 415 (1979 Replacement Part) is set forth for the users' convenience.

46.415. (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. However, the form of any pleadings used in the court shall comply with the rules adopted under ORS 1.002.

(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.

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. 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 clerk. [1971 c 760 §4, 1977 c 875 §2]

46.430 [Repealed by 1971 c 760 §11]

46.435 [1971 c 760 §5, 1973 c 393 §2, 1977 c 875 §3, 1979 c 567 §2, repealed by 1979 c 833 §36]

46.440 [Repealed by 1971 c 760 §11]

46.441 Department to give explanation of manner of giving notice. The small claims department of a district court shall provide to each plaintiff who files a claim with the department a written explanation of how notice may be served in actions in the department. [1977 c 875 §9]

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) If the amount or value claimed is $50 or more, the notice and claim shall be served upon the defendant in the manner provided for the service of summons and complaint in proceedings in the circuit courts.

(4) If the amount or value claimed is less than $50, the notice and claim shall be served upon the defendant either in the manner provided for the service of summons and complaint in proceedings in the circuit courts or by certified mail, at the option of the plaintiff. If service by certified mail is attempted, the clerk shall mail the notice and claim by certified mail addressed to the defendant at his last-known mailing address within the territorial jurisdiction of the 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 receipt shall be prima facie evidence of the date on which the notice and claim was served upon the defendant. If service by certified mail is not successfully ac-

complished, the notice and claim shall be served in the manner provided for the service of summons and complaint in proceedings in the circuit courts.

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

NOTICE TO DEFENDANT:

READ THESE PAPERS CAREFULLY!

Within 14 DAYS after receiving this notice you MUST do ONE of the following things:

Pay the claim plus fees and service expenses paid by plaintiff OR

Demand a hearing OR

Demand a jury trial

If you fail to do one of the above things within 14 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 fees and service expenses paid by the plaintiff.

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

[1971 c 760 §6, 1977 c 875 §4; 1977 c 877 §9a]

46.450 [Repealed by 1971 c 760 §11]

46.455 Defendant's rights and liabilities. Within 14 days after the date of service of the notice and claim upon the defendant as provided in ORS 46.445:

(1) If the defendant admits the claim, he may settle it by:

(a) Paying to the clerk the amount of the claim plus the amount of the small claims fee, law library fee, if any, and service expenses paid by the plaintiff. The clerk shall pay to the plaintiff the amounts paid by the defendant.

(b) If the claim is for recovery of specific personal property, delivering the property to the plaintiff and paying to him the amount of the small claims fee, law library fee, if any, and service expenses paid by the plaintiff.

(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 prescribed by ORS 46.435 (2) (1977 Replacement Part); 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 by ORS 46.435 (1) (1977 Replacement Part); or

(c) If the amount or value claimed exceeds $200, he has a constitutional right to a jury trial and 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. 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, 1973 c 654 §1; 1973 c.812 §3a, 1977 c 875 §5; 1977 c 877 §10a]

Note: The amendments to 46 455 by section 94, chapter 3, Oregon Laws 1981 (special session), become operative January 1, 1983 See section 5, chapter 3, Oregon Laws 1979 (special session) 46 455, as amended, is set forth for the users' convenience

46.455. Within 14 days after the date of service of the notice and claim upon the defendant as provided in ORS 46 445·

(1) If the defendant admits the claim, the defendant may settle it by:

(a) Paying to the clerk the amount of the claim plus the amount of the small claims fee, law library fee, if any, and service expenses paid by the plaintiff The clerk shall pay to the plaintiff the amounts paid by the defendant

(b) If the claim is for recovery of specific personal property, delivering the property to the plaintiff and paying to the plaintiff the amount of the small claims fee, law library fee, if any, and service expenses paid by the plaintiff

(2) If the defendant denies the claim, the defendant

(a) 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 prescribed; and

(b) When demanding a hearing, may assert a counterclaim in the form provided by the court; or

(c) If the amount or value claimed exceeds $200, has a constitutional right to a jury trial and may claim that 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 Thereafter, the plaintiff's

claim will not be limited to the amount stated in the claim, though it must involve the same controversy.

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

46.461 Counterclaims by defendant; transfer of case when amount exceeds $700. The defendant in an action in the small claims department may assert as a counterclaim any claim that, on the date of issuance of notice pursuant to ORS 46.445, 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. If the amount or value of the counterclaim exceeds $700, 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 small claims department, though it must involve the same controversy. [1977 c 875 §10; 1979 c.567 §3]

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. Proof of service of the complaint copy may be made by certificate of the plaintiff or his attorney attached 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, 1975 c.346 §1]

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

46.475 Time extension; default; dismissal; 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 demand a jury trial, upon written request from the plaintiff the clerk shall enter a judgment against the defendant for the relief claimed plus the amount of the small claims fee, law library fee, if any, and service expenses paid by the plaintiff.

(3) If the plaintiff fails within the time provided to file a formal complaint pursuant to ORS 46.465 (3), 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; 1977 c.875 §6]

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, law library fee, if any, and service expenses. 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, 1977 c.875 §7]

46.490 [Repealed by 1971 c 760 §11]

46.495 [1979 c 567 §4, repealed by 1981 c 883 §1]

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

Note: 46 550 is repealed operative January 1, 1983 See sections 5 and 141, chapter 3, Oregon Laws 1981 (special session)

46.560 Where action to be commenced and tried. Except as provided in subsections (1) and (2) of this section, all actions in small claims department shall be commenced and tried in the county in which the defendants, or one of them, reside or may be found at the commencement of the action.

(1) When an action is founded on an alleged tort, it may be commenced either in the county where the cause of action arose or in the county where the defendants, or one of them, reside or may be found at the commencement of the action.

(2) When the defendant has contracted to perform an obligation in a particular county, action may be commenced in either that county or where the defendants, or one of them, reside or may be found at the commencement of the action. [1973 c 446 §2]

JUDGES

46.610 Qualifications of judges. (1) No person shall be eligible to the office of judge of the district court unless he is a citizen of the United States, a resident of this state and a member of the Oregon State Bar.

(2) Except as provided in subsection (4) of this section, each judge of the district court shall be a resident of or have his principal office in a county in which the district court is located.

(3) The residence within this state required by subsection (1) of this section shall have been maintained for at least three years, and the residence or principal office required by subsection (2) of this section shall have been maintained for at least one year, immediately prior to appointment or becoming a candidate for election to the office of judge of the district court

(4) In any county having a population of 500,000 or more, according to the latest federal decennial census, any judge of the district court may reside within 10 miles of the boundary of the county. [Amended by 1965 c 510 §20, 1971 c 633 §16; 1975 c 327 §7, 1979 c 568 §8]

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 ORS 46.026 (1)(b) 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 [1959 c 552 §8, repealed by 1975 c 706 §10]

46.640 [Repealed by 1959 c 559 §10]

46.642 [1965 c 377 §1, 1969 c 269 §3, 1971 c 213 §3, repealed by 1975 c 706 §10]

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. (1) The presiding judge of a district court having two or more judges shall be a judge of the court appointed as provided in ORS 1.008 The judge of a district court having one judge is the presiding judge of the court.

(2) The presiding judge may designate another judge of the court to perform the functions of the office of presiding judge when the presiding judge is temporarily unable to perform those functions.

(3) The presiding judge, to facilitate exercise of administrative authority and supervision over the court and consistent with applicable provisions of law and the Oregon Rules of Civil Procedure, may:

(a) Apportion and otherwise regulate the disposition of the judicial business of the court.

(b) Make rules, issue orders and take other action appropriate to that exercise. [1961 c 724 §24, 1981 s s c.1 §10]

Note: The amendments to 46 665 by section 10, chapter 1, Oregon Laws 1981 (special session), take effect July 1, 1982 See secton 26, chapter 1, Oregon Laws 1981 (special session) 46 665 (1979 Replacement Part) is set forth for the users' convenience

46.665. 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

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 County clerk as district court clerk. The county clerk of a county having a district court organized under ORS 46.019 or 46.025 shall be ex officio clerk of the district court in the county. [Amended by 1953 c 306 §17, 1979 c 568 §9]

Note: 46 720 is repealed operative January 1, 1983 See sections 5 and 141, chapter 3, Oregon Laws 1981 (special session)

46.725 [1975 c 327 §5, repealed by 1979 c 568 §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]

Note: 46 730 is repealed operative January 1, 1983 See sections 5 and 141, chapter 3, Oregon Laws 1981 (special session)

46.735 Authority of clerk to dispose of exhibits. Clerks of the district court may dispose of exhibits in all actions and proceedings in the same manner as provided for the disposition of exhibits in circuit courts, as provided in ORS 7.120. [1979 c 58 §4]

46.740 Docket. In suitable books 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 release, release on bail or security, and commitment or arrest for want of bail or security or upon revocation of release.

(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; 1975 c 611 §21]

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 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; 1979 c 58 §2]

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 at a cost determined by the governing body of the county. [Amended by 1977 c.518 §1]

Note: 46.770 is repealed operative January 1, 1983 See sections 5 and 141, chapter 3, Oregon Laws 1981 (special session)

46.780 Secretary for court; salary; ex officio deputy clerk. (1) Each judge of a district court, whenever he deems it necessary or advisable, is authorized to select and ap-

point a secretary to serve the court. The judge shall determine and fix the term of employment. Except as provided in subsections (2), (3) and (4) of this section, 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.

(2) A reasonable salary shall be set for the secretary appointed to serve the district court organized under ORS 46.019 (1). The salary shall be paid 80 percent out of funds of Union County and 20 percent out of funds of Wallowa County by the respective county court or board of county commissioners.

(3) A reasonable salary shall be set for the secretary appointed to serve the district court organized under ORS 46.019 (2). The salary shall be paid 50 percent out of funds of Crook County and 50 percent out of funds of Jefferson County by the respective county court or board of county commissioners.

(4) A reasonable salary shall be set for the secretary appointed to serve the district court organized under ORS 46.019 (3). The salary shall be paid 80 percent out of funds of Umatilla County and 20 percent out of funds of Morrow County by the respective county court or board of county commissioners. [1965 c.203 §1; 1975 c 327 §8; 1979 c 568 §10]

Note: 46 780 is repealed operative January 1, 1983 See sections 5 and 141, chapter 3, Oregon Laws 1981 (special session)

CRIMINAL PROCEEDINGS

46.800 Criminal procedure generally; challenges; costs and disbursements; disposition of fines and forfeited bail. (1) District courts are governed in their criminal and quasi-criminal actions and proceedings by the provisions of law regulating such actions and proceedings as provided in ORS chapters 131, 133, 135, 136 and 137, in so far as the same are or can be made applicable in the several cases arising before them, except when other provisions of law provide for a different procedure in district courts for such cases and proceedings, in which event such other provisions shall control; provided, however, that all money required by law to be paid or deposited with a district court shall be paid to or deposited with the clerk of that court.

(2) In criminal actions in district courts, each party may take challenges for cause and three peremptory challenges, and no more. The manner in which challenges may be taken shall be the same as provided for in the circuit court.

(3) (a) In criminal cases in district courts for counties having a population of less than 500,000, according to the latest federal decennial census, the costs and disbursements shall be added to the fine, penalty or sentence imposed in a sum not less than $5; provided, the court, at its discretion in justifiable cases, may on behalf of the state waive payment of all or any part of the costs and disbursements in excess of $5.

(b) The clerk shall, on the day next following, pay over to the county treasurer all fees, costs and disbursements collected and taken, and the treasurer shall issue to the clerk his receipt therefor.

(4) Except as otherwise provided in ORS 153.630, but notwithstanding any other provision of law, one-half of all fines and forfeited bail collected by the clerk of a district court in criminal cases in the district court shall be paid to the Department of Revenue, who shall place the money to the credit of the General Fund available for general governmental expense, and the other half of such fines and forfeited bail shall be paid to the county treasurer, who shall place the money to the credit of the general fund of the county. Payment of fines and forfeited bail under this section shall be made within the first 20 days of the month following the month in which collected. [1977 c.876 §10 (enacted in lieu of 156 610, 156 620, 156 640 and 156 650)]

Note: The amendments to 46 800 by section 103, chapter 3, Oregon Laws 1981 (special session), become operative January 1, 1983 See section 5, chapter 3, Oregon Laws 1981 (special session) 46 800, as amended, is set forth for the users' convenience

46.800. (1) District courts are governed in their criminal and quasi-criminal actions and proceedings by the provisions of law regulating such actions and proceedings as provided in ORS chapters 131, 133, 135, 136 and 137, in so far as the same are or can be made applicable in the several cases arising before them, except when other provisions of law provide for a different procedure in district courts for such actions and proceedings, in which event such other provisions shall control

(2) In criminal actions in district courts, each party may take challenges for cause and three peremptory challenges, and no more The manner in which challenges

may be taken shall be the same as provided for in the circuit court

(3) In criminal actions in district courts, the costs and disbursements shall be added to the fine, penalty or sentence imposed in a sum not less than $5; but the court, at its discretion in justifiable cases, may on behalf of the state waive payment of all or any part of the costs and disbursements in excess of $5

(4) Except as otherwise specifically provided by law, all fines, costs and forfeited bail collected by the clerk of a district court in criminal actions and proceedings, as defined in ORS 131 005, in the district court shall be paid to the Department of Revenue and deposited in the General Fund available for general governmental expenses Payment of fines, costs and forfeited bail under this subsection shall be made within the first 20 days of the month following the month in which collected

46.810 Appeal from district court in criminal proceeding subject to ORS chapter 138. An appeal taken from district court in a criminal action or proceeding shall be in accordance with and be subject to the provisions of ORS chapter 138. [Formerly 157.081]

CHAPTERS 47 TO 50
[Reserved for expansion]