

Chapter 33

1987 REPLACEMENT PART

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PUNISHMENT FOR CONTEMPT

33.010 Contempts defined. (1) The following acts or omissions, in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:

(a) Disorderly, contemptuous or insolent behavior toward the judge, while holding the court, tending to impair its authority or to interrupt the due course of a trial or other judicial proceeding.

(b) A breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding.

(c) Misbehavior in office, or other wilful neglect or violation of duty, by an attorney, clerk, sheriff or other person appointed or selected to perform a judicial or ministerial service.

(d) Deceit, or abuse of the process or proceedings of the court, by a party to an action, suit or special proceeding.

(e) Disobedience of any lawful judgment, decree, order or process of the court, except as provided in ORCP 78 C.

(f) Assuming to be an attorney or other officer of the court and acting as such without authority in a particular instance.

(g) Rescuing any person or property in the custody of an officer by virtue of an order or process of the court.

(h) Unlawfully detaining a witness or party to an action, suit or proceeding, while going to, remaining at, or returning from the court where the same is for trial.

(i) Any other unlawful interference with the process or proceedings of a court.

(j) Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.

(k) When summoned as a juror in a court, improperly conversing with a party to an action, suit or proceeding to be tried at such court, or with any other person, in relation to the merits of such action, suit or proceeding, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court.

(L) Disobedience by an inferior tribunal, magistrate or officer of the lawful judgment, decree, order or process of a superior court, or proceeding in an action, suit or proceeding contrary to law, after such action, suit or proceeding has been removed from the jurisdiction of such inferior tribunal, magistrate or officer.

(2) The conduct specified in paragraphs (a) and (b) of subsection (1) of this section, when committed before a judicial officer, or disobedience of the lawful order or process of such officer, made in the cases specified in ORS 1.240, is also to be deemed a contempt of the authority of such officer. [Amended by 1981 c.898 §37]

33.020 Limitation of punishment. (1) Every court of justice and every judicial officer has power to punish contempt by fine or imprisonment, or both; but such fine shall not exceed \$300 nor the imprisonment six months, except in the cases mentioned in subsection (2) of this section; and when the contempt is not one of those mentioned in ORS 33.010 (1)(a) and (b), or in ORS 1.240 (1), it must appear that the right or remedy of a party to an action, suit or proceeding was defeated or prejudiced thereby before the contempt can be punished otherwise than by a fine not exceeding \$100.

(2) In addition to the punishment provided for in subsection (1) of this section, the court or judge shall have power to constrain performance of any lawful order, judgment or decree of such court or judge, by imprisonment of the person failing or refusing to comply, until the order, judgment or decree has been complied with.

33.030 Summary punishment of direct contempts. When a contempt is committed in the immediate view and presence of the court or officer, it may be punished summarily, for which an order must be made reciting the facts as occurring in such immediate view and presence, determining that the person proceeded against is thereby guilty of a contempt, and that the person be punished as therein prescribed.

33.040 Proceedings in case of indirect contempts. In cases other than those mentioned in ORS 33.030, before any proceedings can be taken therein, the facts constituting the contempt must be shown by an affidavit presented to the court or judicial officer, and thereupon such court or officer may either make an order upon the person charged to show cause why the person should not be arrested to answer, or issue a warrant of arrest to bring such person to answer in the first instance. The affidavit shall set forth the facts constituting the contempt, but need not contain recitals of matters already appearing in the record of any action, suit or proceeding in which the person charged with contempt has been personally served with process. It shall be sufficient if the name of the State of Oregon be added as a party plaintiff in the affidavit and proceedings following it, without any action of the district attorney, and without any proceed-

ings for adding such party. [Amended by 1955 c.648 §2, 1961 c 210 §5]

33.050 Procedure when defendant is already in custody. If the party charged is in the custody of an officer by virtue of a legal order or process, except upon a sentence for a felony, an order may be made for the production of such person by the officer having the person in custody, that the person may answer, and the person shall thereupon be produced and held, until an order is made for the disposal of the person.

33.060 Parties plaintiff; prosecution by district attorney. (1) In the proceeding for a contempt, the state is the plaintiff. In all cases of public interest, the proceeding may be prosecuted by the district attorney, on behalf of the state, and in all cases where the proceeding is commenced upon the relation of a private party, such party shall be deemed a coplaintiff with the state.

(2) When a party alleging violation of a restraining order issued under ORS 107.700 to 107.730 states that the party is unable to afford private counsel and asks the district attorney of the county in which the restraining order was issued to initiate and prosecute a proceeding under ORS 33.010 to 33.150 to compel compliance with the order, the district attorney shall initiate and prosecute such a proceeding if there is probable cause to believe that the violation occurred. [Amended by 1981 c.781 §1, 1983 c.561 §1]

33.070 Warrant of arrest; custody of person arrested. In a warrant of arrest issued for a contempt, the court or judicial officer shall direct whether the person charged may be released or be detained in custody, and if the person may be released, the amount of security required. Upon executing the warrant of arrest, the sheriff must keep the person in actual custody, bring the person before the court or judicial officer, and detain the person until a release decision is made in the premises, unless the person arrested deposits security. [Amended by 1973 c 836 §321]

33.080 Security; how given. The defendant shall be discharged from the arrest upon executing and delivering to the sheriff, at any time before the return day of the warrant, a security release or a release agreement as provided in ORS 135.230 to 135.290, to the effect that the defendant will appear on the return day, and abide the order or judgment of the court or officer thereupon, or pay, as may be directed, the sum specified in the warrant. [Amended by 1973 c.836 §322]

33.090 Return of warrant; investigation of charge. The sheriff shall return the

warrant of arrest, and the security deposit, if any, given the sheriff by the defendant, by the return day specified. When the defendant has been brought up or appeared, the court or judicial officer shall proceed to investigate the charge by examining the defendant, and witnesses for or against the defendant, for which an adjournment may be had from time to time, if necessary.

[Amended by 1973 c.836 §323]

33.095 Right to counsel in certain contempts; counsel for indigent contemnor. (1) A party cited to show cause why the party should not be held in contempt of court or arrested to answer or by any other means brought before a court to answer for any contempt alleged pursuant to ORS 33.010 or 33.040 or ORCP 78 B. shall be entitled to be represented by counsel.

(2) If the alleged contemnor is not represented by counsel when coming before the court, the court shall inform the alleged contemnor of the right to counsel, and of the right to appointed counsel if the alleged contemnor is indigent and the proceedings may result in any incarceration. If the alleged contemnor is indigent and the proceedings may result in incarceration, the court, upon the alleged contemnor's request, shall appoint counsel to represent the alleged contemnor, subject to ORS 135.055, 151.410 to 151.480 and applicable contracts entered into by the State Court Administrator under ORS 151.460. [1975 c 516 §2; 1981 c 898 §38, 1987 c 803 §15]

33.100 Determination of guilt; sentence. Upon the evidence so taken, the court or judicial officer shall determine whether the defendant is guilty of the contempt charge, and if determined to be guilty, shall sentence the defendant to be punished as provided in ORS 33.020.

33.110 Judgment of indemnification and for costs. If any loss or injury to a party in an action, suit or proceeding, prejudicial to the rights of the party therein, has been caused by the contempt, the court or judicial officer, in addition to the punishment imposed for the contempt, may give judgment that the party aggrieved recover from the defendant a sum of money sufficient to indemnify the party, and to satisfy costs and disbursements of the party, which judgment, and the acceptance of the amount thereof, is a bar to any action, suit or proceeding by the aggrieved party for such loss or injury.

33.130 Persons proceeded against liable to indictment; punishment. Persons proceeded against for contempt are also liable to indictment for the same misconduct, if it is an indictable offense, but the court before which a conviction is had on the indictment, in passing

sentence, shall take into consideration the punishment before inflicted.

33.140 Nonappearance of defendant; right to recovery on undertaking. When the warrant of arrest has been returned served, if the defendant does not appear on the return day, the court or judicial officer may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking is prosecuted, and the aggrieved party joins in the action, and the sum specified therein is recovered, so much thereof as will compensate such party for the loss or injury sustained by reason of the misconduct for which the warrant was issued shall be deemed to be recovered for such party exclusively.

33.150 Appeal. Either party to a judgment in a proceeding for a contempt may appeal therefrom, in like manner and with like effect as from a judgment in an action, but the appeal shall not stay the proceedings in any other action, suit or proceeding, or upon any judgment, decree or order therein, concerning which or wherein such contempt was committed.

ARBITRATION AND AWARD

33.210 Controversies arbitrable. All persons desiring to settle by arbitration any controversy or quarrel, except such as respect the title to real estate or the terms or conditions of employment under collective contracts between employers and employes or between employers and associations of employes, may submit their differences to the award or umpirage of any person or persons mutually selected. [Amended by 1979 c 284 §67]

33.220 Written arbitration agreements valid. A provision in any written contract to settle by arbitration a controversy thereafter arising out of such contract, or out of the refusal to perform the whole or any part thereof, or an agreement in writing between persons to submit to arbitration any controversy then existing between them, shall, provided the arbitration is held within the State of Oregon, be valid, irrevocable and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

33.230 Court order compelling parties to arbitrate as agreed. A party aggrieved by the failure, neglect or refusal of another to perform under a contract or submission providing for arbitration, described in ORS 33.220, shall petition the circuit court, or a judge thereof, for an order directing that the arbitration proceed in the manner provided for in the contract or sub-

mission. Ten days' notice in writing of the application shall be served upon the party in default, in the manner provided for personal service of a summons. The court or judge shall hear the parties, and if satisfied that the making of the contract or submission or the failure to comply therewith is not an issue, shall make an order directing the parties to proceed to arbitration in accordance with the terms of the contract or submission. If the making of the contract or submission or the default is an issue, the court or the judge shall proceed summarily to the trial thereof. If no jury trial is demanded by either party, the court or judge shall hear and determine such issue. Where such an issue is raised, any party may, on or before the return day of the notice of application, demand a jury trial of the issue, and if such demand is made, the court or judge shall make an order referring the issue to a jury in the manner provided by ORCP 51 D. If the jury finds that no written contract providing for arbitration was made or submission entered into, as the case may be, or that there is no default, the proceeding shall be dismissed. If the jury finds that a written contract providing for arbitration was made or submission was entered into and there is a default in the performance thereof, the court or judge shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof. [Amended by 1979 c 284 §68]

33.240 Abatement of action or suit involving arbitrable issue. If any action, suit or proceeding is brought upon any issue arising out of an agreement which contains a provision for arbitration of the matter in controversy in such action, suit or proceeding, then, upon application, any judge of a circuit court, upon being satisfied that the issue is referable to arbitration, shall abate the action, suit or proceeding so that arbitration may be had in accordance with the terms of the agreement. The application shall be heard similarly to hearings on motions.

33.250 Appointment of arbitrator; number of arbitrators. If, in the arbitration agreement, no provision is made for the manner of selecting the arbitrators, or if, for any reason, there is a failure to act or a vacancy, and no provision in the agreement for the filling thereof, then, upon application of any party to the agreement, any court of record shall appoint an arbitrator or arbitrators to fill the vacancy, who shall act with the same force and effect as if specifically named in the arbitration agreement. Unless otherwise provided, the arbitration shall be by a single arbitrator.

33.260 Oath of arbitrators. The arbitrators shall be sworn to try and determine the cause referred to them and to make an award under the hands and seals of a majority of them, agreeable to the terms of the submission.

33.270 Compensation of arbitrators. The compensation of arbitrators shall be determined by agreement between the parties to the arbitration, or, in case of their inability to agree, then by any judge of the circuit court.

33.280 Power of arbitrators. Arbitrators or a majority of them, shall have power to:

(1) Compel the attendance of witnesses duly notified by either party, and to enforce from either party the production of all books, papers and documents the arbitrators deem material to the cause.

(2) Administer oaths or affirmations to witnesses.

(3) Adjourn their meetings from day to day, or for a longer time, and also from place to place.

(4) Decide both the law and the facts involved in the cause submitted to them.

33.290 Coercion of witness or party. Whenever, on motion of any arbitrator or party in interest, it appears to the circuit court of the county in which the arbitration proceedings are pending that any witness or party has refused to answer a subpoena or obey any lawful order of the arbitrator, the court may require the witness or party to show cause why the witness or party should not be punished for contempt of court, to the same extent and purpose as if the proceedings were pending before the court.

33.300 Cost of fees. Unless otherwise agreed upon, the costs of witness fees and other fees in the case shall be taxed against the losing party, and such fees shall be indorsed upon the award. When the award is confirmed as the judgment of a circuit court, execution shall issue therefor as for costs and disbursements in civil actions. [Amended by 1985 c 496 §19]

33.310 Filing and service of award; fee; judgment if no exceptions; execution. The award of the arbitrators, together with the written agreement to submit, shall be delivered to the clerk of the circuit court selected to render judgment on the award. After charging and collecting a fee of \$25 therefor, the clerk shall enter the same of record in the office of the clerk. A copy of the award, signed by the arbitrators, or a majority of them, shall also be served upon or delivered to each of the parties interested in the award, and proof of such service or delivery shall

be filed with the clerk. If no exceptions are filed against the same within 20 days after such service, judgment shall be entered as upon the verdict of a jury, and execution may issue thereon, and the same proceedings may be had upon the award with like effect as upon a verdict in a civil action. [Amended by 1985 c 496 §20]

33.320 Exceptions to award; filing fees. (1) Within the period specified in ORS 33.310, the party against whom an award was made may file with the circuit court exceptions in writing to the award for any of the following causes:

(a) The award was procured by corruption, fraud or undue means.

(b) There was evident partiality or corruption on the part of the arbitrators, or any of them.

(c) The arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party were prejudiced.

(d) The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

(e) There was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award:

(f) The arbitrators awarded upon a matter not submitted to them, unless it was a matter not affecting the merits of the decision upon the matters submitted.

(g) The award was imperfect in matter of form not affecting the merits of the controversy.

(2) The clerk of the court shall collect from the party filing exceptions under subsection (1) of this section a filing fee of \$25, and from a party filing an appearance in opposition to the exceptions a filing fee of \$15. However, if the exceptions relate to an arbitration award made following abatement under ORS 33.240 of an action, suit or proceeding in respect to which the parties have paid filing fees under ORS 21.110, no filing fees shall be collected under this subsection. No exceptions or appearance in opposition thereto shall be deemed filed unless the fee required by this subsection is paid by the filing party. [Amended by 1985 c.496 §21]

33.330 Vacation or modification of award on exceptions. If, upon exceptions filed, it appears to the court that the award should

be vacated or modified, the court may refer the cause back to the arbitrators with proper instructions for correction or rehearing and, upon failure of the arbitrators to follow said instructions, the court shall have jurisdiction over the case and proceed to its determination.

33.340 Appeal from judgment on award. Whenever no objection is made to the entering of judgment after award, judgment shall be entered according to the award and shall have the force and effect of a judgment obtained in the circuit court after default. Whenever any judgment is entered after objection on the part of any party by the order of such court, such judgment shall be subject to appeal to the higher courts in the manner provided by law for taking appeals to such courts. The right to except to or review an award or to appeal from a judgment thereon shall not be circumscribed or abridged by any contractual provisions; nor shall any burden or penalty, other than such as are provided by law, be imposed by anyone against any party who excepts or appeals. [Amended by 1985 c 496 §22]

COURT ARBITRATION PROGRAM

33.350 Method of establishing; suspension or termination. (1) An arbitration program under ORS 33.350 to 33.400 for civil actions may be established for:

(a) The circuit court in a judicial district by an affirmative vote of a majority of the judges of the court, subject to the approval of the Chief Justice of the Supreme Court, or by an order of the Chief Justice.

(b) The district court for a county or counties by an affirmative vote of a majority of the judges of the court, subject to the approval of the Chief Justice of the Supreme Court, or by an order of the Chief Justice.

(2) Rules consistent with ORS 33.350 to 33.400 to govern the operation and procedure of an arbitration program established under subsection (1) of this section for a court may be made in the same manner as other rules applicable to the court pursuant to ORS 1.002 (1), 3.065 (3), 3.220, 46.280 or 46.665 (3). Rules to govern the operation and procedure of a program made pursuant to ORS 3.065 (3), 3.220, 46.280 or 46.665 (3) are subject to the approval of the Chief Justice of the Supreme Court.

(3) An arbitration program established under subsection (1) of this section may be suspended or terminated by an order of the Chief Justice of the Supreme Court. A civil action may not be referred to arbitration under a program while the program

is suspended or after the program is terminated, but an action referred to arbitration under a program before the program is suspended or terminated and pending on the effective date of the suspension or termination shall continue to be governed by the applicable provisions of ORS 33.350 to 33.400 and rules made under subsection (2) of this section.

(4) ORS 33.350 to 33.400 do not apply to appeals from a county, justice's or municipal court or actions in the small claims department of a district court. [1983 c 670 §1, 1985 c.342 §3]

33.360 Mandatory arbitration; exemptions. (1) In a civil action in a circuit or district court having an arbitration program established under ORS 33.350, where all parties have appeared, the court shall refer the action to arbitration under ORS 33.350 to 33.400 if:

(a) The only relief claimed is recovery of money or damages, and no party asserts a claim for money or general and special damages in an amount exceeding \$25,000 in the circuit court, or in an amount exceeding \$10,000 in the district court, exclusive of attorney fees, costs and disbursements and interest on judgment.

(b) The action is a domestic relations suit, as defined in ORS 107.510, in which the only contested issue is the division or other disposition of property between the parties.

(2) The presiding judge of the court may exempt from arbitration under ORS 33.350 to 33.400 a civil action that otherwise would be referred to arbitration under subsection (1) of this section, or may remove from further arbitration proceedings a civil action that has been referred to arbitration under subsection (1) of this section, when, in the opinion of the judge, good cause exists for that exemption or removal. [1983 c 670 §2, 1987 c.116 §1, 1987 c.125 §1]

Note: Section 4, chapter 116, Oregon Laws 1987, provides.

Sec. 4. The amendments of statute sections by sections 1 to 3 of this Act [ORS 33.360, 33.370 and 33.380] are applicable only in respect to civil actions commenced on or after the effective date of this Act [September 27, 1987] [1987 c 116 §4]

33.370 Stipulation for arbitration; conditions; relief. (1) In a civil action in a circuit or district court having an arbitration program established under ORS 33.350, where all parties have appeared and agreed to arbitration by stipulation, the court shall refer the action to arbitration under ORS 33.350 to 33.400 if:

(a) The relief claimed is more than or other than recovery of money or damages.

(b) The action is in the circuit court, the only relief claimed is recovery of money or damages and a party asserts a claim for money or general and special damages in an amount exceeding \$25,000, exclusive of attorney fees, costs and disbursements and interest on judgment.

(2) If a civil action is referred to arbitration under subsection (1) of this section, the arbitrator may grant any relief that could have been granted if the action were determined by a judge of the court. [1983 c 670 §3, 1987 c 116 §2]

Note: See note under 33.360

33.380 Arbitration after waiver of amount of claim exceeding \$25,000. In a civil action in a circuit court having an arbitration program established under ORS 33.350, where all parties have appeared, where the only relief claimed is recovery of money or damages, where a party asserts a claim for money or general and special damages in an amount exceeding \$25,000, exclusive of attorney fees, costs and disbursements and interest on judgment, and where all parties asserting those claims waive the amounts of those claims that exceed \$25,000, the court shall refer the action to arbitration under ORS 33.350 to 33.400. A waiver of an amount of a claim under this section shall be for the purpose of arbitration under ORS 33.350 to 33.400 only and shall not restrict assertion of a larger claim in a trial de novo under ORS 33.400. [1983 c.670 §4, 1985 c 342 §4, 1987 c 116 §3]

Note: See note under 33.360.

33.390 Notice of arbitration hearing; open proceeding; compensation and expenses. (1) At least five days before the date set for an arbitration hearing, the arbitrator shall notify the clerk of the court of the time and place of the hearing. The clerk shall post a notice of the time and place of the hearing in a conspicuous place for trial notices at the principal location for the sitting of the court in the county in which the action was commenced.

(2) The arbitration proceeding and the records thereof shall be open to the public to the same extent as would a trial of the action in the court and the records thereof.

(3) The compensation of the arbitrator and other expenses of the arbitration proceeding shall be the obligation of the parties or any of them as provided by rules made under ORS 33.350 (2). However, if those rules require the parties or any of them to pay any of those expenses in advance, in the form of fees or otherwise, as a condition of arbitration, the rules shall also provide for the waiver in whole or in part, deferral in whole or in

part, or both, of that payment by a party whom the court finds is then unable to pay all or any part of those advance expenses. Expenses so waived shall be paid by the state from funds available for the purpose. Expenses so deferred shall be paid, if necessary, by the state from funds available for the purpose, and the state shall be reimbursed according to the terms of the deferral.

[1983 c 670 §5]

33.400 Filing of decision and award; notice of appeal; trial de novo; fees; effect of arbitration decision and award. (1) At the conclusion of arbitration under ORS 33.350 to 33.400 of a civil action, the arbitrator shall file the decision and award with the clerk of the court that referred the action to arbitration, together with proof of service of a copy of the decision and award upon each party.

(2)(a) Within 20 days after the filing of a decision and award with the clerk of the court under subsection (1) of this section, a party against whom relief is granted by the decision and award or a party whose claim for relief was greater than the relief granted to the party by the decision and award, but no other party, may file with the clerk a written notice of appeal and request for a trial de novo of the action in the court on all issues of law and fact. After the filing of the written notice a trial de novo of the action shall be held. If the action is triable by right to a jury and a jury is demanded by a party having the right of trial by jury, the trial de novo shall include a jury.

(b) If a party files a written notice under paragraph (a) of this subsection, a trial fee or jury trial fee, as applicable, shall be collected as provided in ORS 21.270 or 46.221.

(c) A party filing a written notice under paragraph (a) of this subsection shall deposit with the clerk of the court the sum of \$150. If the position under the arbitration decision and award of the party filing the written notice is not improved as a result of a judgment in the action on the trial de novo, the clerk shall dispose of the sum deposited in the same manner as a fee collected by the clerk. If the position of the party is improved as a result of a judgment, the clerk shall return the sum deposited to the party. If the court finds that the party filing the written notice is then unable to pay all or any part of the sum to be deposited, the court may waive in whole or in part, defer in whole or in part, or both, the sum. If the sum or any part thereof is so deferred and the position of the party is not improved as a result of a judgment, the deferred amount shall be paid by the party according to the terms of the deferral.

(d) Notwithstanding any other provision of law or the Oregon Rules of Civil Procedure, a party filing a written notice under paragraph (a) of this subsection whose position under the arbitration decision and award is not improved as a result of a judgment in the action on the trial de novo shall not be entitled to attorney fees or costs and disbursements, and shall be taxed the costs and disbursements of the other parties to the action on the trial de novo.

(3) If a written notice is not filed under paragraph (a) of subsection (2) of this section within the 20 days prescribed, the clerk of the court shall enter the arbitration decision and award as a final judgment of the court, which shall have the same force and effect as a final judgment of the court in the civil action and may not be appealed. [1983 c 670 §6]

CHANGE OF NAME

33.410 Jurisdiction; grounds.

Application for change of name of a person may be heard and determined by the probate court or, if the circuit court is not the probate court, the circuit court if its jurisdiction has been extended to include this section pursuant to ORS 3.275 of the county in which the person resides. The change of name shall be granted by the court unless the court finds that the change is not consistent with the public interest. [Amended by 1967 c 534 §11; 1975 c 733 §1]

33.420 Notice of application and decree; certificate; minor children. (1) Before decreeing a change of name, except as provided in ORS 109.360, the court shall require public notice of the application to be given, that all persons may show cause why the same should not be granted. The court shall also require public notice to be given of the change decreed, and on return of proof thereof may grant certificate, under the seal of the court, of the name the person is to have, which shall thereafter be the legal name of the person.

(2) Before decreeing a change of name in the case of a minor child the court shall require that, in addition to the notice required under subsection (1) of this section, written notice be given to the parents of the child, both custodial and non-custodial, and to any legal guardian of the child. [Amended by 1983 c 369 §6]

33.430 Name of child on birth certificate, how changed; court conference with child. (1) In the case of a change, by court order, of the name of the parents of any minor child, if the child's birth certificate is on file in this state, the State Registrar of Vital Statistics, upon

receipt of a certified copy of the court order changing the name, together with the information required to locate the original birth certificate of the child, shall prepare a new birth certificate for the child in the new name of the parents of the child. The name of the parents as so changed shall be set forth in the new certificate, in place of their original name.

(2) The evidence upon which the new certificate was made, and the original certificate, shall be sealed and filed by the State Registrar of Vital Statistics, and may be opened only upon demand of the person whose name was changed, if of legal age, or by an order of a court of competent jurisdiction.

(3) When a change of name by parents will affect the name of their child or children under subsection (1) of this section, the court, on its own motion or on request of a child of the parents, may take testimony from or confer with the child or children and may exclude from the conference the parents and other persons if the court finds that such action would be in the best interests of the child or children. However, the court shall permit an attorney for the parents to attend the conference, and the conference shall be reported. If the court finds that a change of name would not be in the best interests of the child, the court may provide in the order changing the name of the parents that such change of name shall not affect the child, and a new birth certificate shall not be prepared for the child. [Amended by 1983 c 369 §7]

33.440 Application by minor child; court conference. When a minor child applies for a change of name under ORS 33.410, the court may, upon its own motion, confer with the child and may exclude from the conference the parents and other persons if the court finds that such action would be in the best interests of the child. However, the court shall permit an attorney for the child to attend the conference, and the conference shall be reported. [1983 c 369 §5]

CHANGE OF SEX

33.460 Jurisdiction; grounds; procedure. (1) A court that has jurisdiction to determine an application for change of name of person under ORS 33.410 and 33.420 may order a legal change of sex and grant a certificate indicating the change of sex to a person whose sex has been changed by surgical procedure.

(2) The court may order a legal change of sex and grant the certificate in the same manner as that provided for change of name of a person under ORS 33.410 and 33.420.

(3) If a person applies for a change of name under ORS 33.410 and 33.420 at the time the person applies for a legal change of sex under this section, the court may order change of name and legal change of sex at the same time and in the same proceeding. [1981 c 221 §1]

SURETIES

33.510 Discharge of surety on application of surety. The surety or the representatives of any surety upon the bond of any trustee, committee, guardian, assignee, receiver, executor, administrator or other fiduciary is entitled as a matter of right to be discharged from liability as provided in this section, and to that end may, on notice to the principal named in the bond, apply to the court that accepted the bond or to the court of which the judge who accepted the bond was a member or to any judge thereof, praying to be relieved from liability as surety for the act or omission of the principal occurring after the date of the order relieving the surety, and that the principal be required to account and give new sureties. Notice of the application shall be served on the principal personally not less than five days prior to the date on which the application is to be made, unless it satisfactorily appears to the court or judge that personal service cannot be had with due diligence within the state, in which case notice may be given by personal service without the state or in such manner as the court or judge directs. Pending the hearing of the application the court or judge may restrain the principal from acting except to preserve the trust estate until further order. If upon the return of the application the principal fails to file a new bond to the satisfaction of the court or judge, the court or judge must make an order requiring the principal to file a new bond within a period not exceeding five days. If the new bond is filed upon the return of the application, or within the time fixed by the order, the court or judge must make a decree or order requiring the principal to account for all acts and proceedings to and including the date of the decree or order, and to file such account within a time fixed, not exceeding 20 days, and discharge the surety making application from liability for any act or default of the principal subsequent to the date of the decree or order. If the principal fails to file a new bond within the time specified, a decree or order must be made revoking the appointment of the principal or removing and requiring the principal to file an account within not more than 20 days. If the principal fails to file the account, the surety may make and file an account with like force and effect as though filed by the principal, and upon

settlement thereof and upon the trust fund or estate being found or made good and paid over or properly secured, credit shall be given for all commissions, costs, disbursements and allowances to which the principal would be entitled were the principal accounting, and allowance shall be made to the surety for the expense incurred in filing the account and procuring the settlement thereof. After the filing of the account, either by the principal or the surety, the court or judge must, upon the petition of the principal or surety, issue an order requiring all persons interested in the estate or trust to attend a settlement of the account at a time and place therein specified, and upon the trust fund or estate being found or made good and paid over or properly secured, the surety shall be discharged from all liability. Upon demand in writing by the principal, the surety shall return any compensation that has been paid for the unexpired period of the bond.

33.520 Discharge of surety on application of principal. Any trustee, committee, guardian, assignee, receiver, executor, administrator or other fiduciary shall be entitled to have any surety on the bond of the fiduciary discharged from liability thereon, and the fiduciary may file a new bond as provided in this section. The fiduciary may, on written notice to the surety and to all other interested persons, apply to the court that accepted the bond, or to a judge thereof, praying that the surety be discharged from liability thereon, and that the principal be allowed to file a new bond and to account. Notice of the application shall be served on the surety and on each of the persons interested, within the state, not less than 10 days prior to the date on which the application is to be made, unless it satisfactorily appears to the court or judge that the notice cannot with due diligence be served within the state, in which case notice may be given in such manner as the court or judge shall direct. Upon the return of the application, the principal may file a new bond satisfactory to the court or judge, and therewith file an account of all proceedings, whereupon the court or judge shall proceed, upon due notice to all persons interested, to judicially settle the account and duly credit and charge the principal; and upon the trust fund or estate being found or made good and paid over or properly secured, the surety shall be discharged from all liability.

33.530 Liability of sureties after termination of bond. (1) When a bond of any personal representative, guardian or conservator is terminated upon the issuance of a new bond to the personal representative, guardian or conser-

vator by a new surety, the former surety shall not be liable on the old bond for any acts or omissions of the personal representative, guardian or conservator which occur after the issuance of the new bond.

(2) A new surety for a personal representative, guardian or conservator who issues a new bond after the termination of a previous bond written by another surety for a personal representative, guardian or conservator shall not be liable for any acts or omissions of the personal representative, guardian or conservator which occurred prior to the issuance of the new bond.

[1983 c 613 §§2, 3]

EVALUATING SECURITIES OF SECURED CREDITOR

33.610 Evaluating securities of secured creditor. In the administration of a decedent's estate, or whenever the assets of any person, partnership or corporation are being administered in receivership or any liquidation proceedings, or under an assignment for the benefit of creditors, the value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which the securities were delivered to the creditors, or by the creditors and the person or official liquidating the assets by agreement, arbitration, compromise or litigation. Where the proceedings are in court, the determination shall be subject to the control or decision of the court. If, under an assignment for the benefit of creditors, the secured creditor and the assignee cannot, by agreement, arbitration or compromise, determine the value, either the assignee or the creditor may apply to a court of competent jurisdiction in the place of residence of the assignee for determination of the value by declaratory judgment, or otherwise. In all cases, the amount of the determined value shall be credited upon the secured claim and a general or unsecured creditor's dividend shall be paid only on the uncredited balance, if any, of the claim. Nothing contained in this section shall be construed to compel any creditor holding security to file a claim for participation in any such estate or proceeding, or to compel the creditor, if the creditor does not file a claim, to foreclose or realize upon the security of the creditor.

DETERMINATION OF LEGALITY OF DISTRICT ORGANIZATION AND ACTIONS

33.710 Definitions; judicial examination to determine legality of any municipal

corporation's organization and actions. (1) As used in ORS 33.710 and 33.720, unless the context requires otherwise:

(a) "Governing body" means the city council, board of commissioners, board of directors, county court or other managing board of a municipal corporation including a board managing a municipally owned public utility or a dock commission.

(b) "Municipal corporation" means any county, city, port, school district, union high school district, community college district and all other public or quasi-public corporations including a municipal utility or dock commission operated by a separate board or commission.

(2) The governing body may commence a proceeding in the circuit court of the county in which the municipal corporation or the greater part thereof is located, for the purpose of having a judicial examination and judgment of the court as to the regularity and legality of:

(a) The proceedings in connection with the establishment or creation of the municipal corporation, including any action or proceedings proclaiming the creation of the municipal corporation or declaring the result of any election therein.

(b) The proceedings of the governing body and of the municipal corporation providing for and authorizing the issue and sale of bonds of the municipal corporation, whether the bonds or any of them have or have not been sold or disposed of.

(c) Any order of the governing body levying a tax.

(d) The authorization of any contract and as to the validity of the contract, whether or not it has been executed.

(3) All proceedings of the municipal corporation may be judicially examined and determined in one special proceeding, or any part thereof may be separately examined and determined by the court. [Amended by 1975 c.133 §1]

33.720 Proceeding in rem; practice and procedure as in action not triable by right to jury; service by publication; appeal; costs. (1) The determination authorized by ORS 33.710 shall be in the nature of a proceeding in rem; and the practice and procedure therein shall follow the practice and procedure of an action not triable by right to a jury, as far as the same is consistent with the determination sought to be obtained, except as provided in this section.

(2) Jurisdiction of the municipal corporation shall be obtained by the publication of notice

directed to the municipal corporation; and jurisdiction of the electors of the municipal corporation shall be obtained by publication of notice directed to all electors, freeholders, taxpayers and other interested persons, without naming such electors, freeholders, taxpayers and other interested persons individually. The notice shall be served on all parties in interest by publication thereof for at least once a week for three successive weeks in a newspaper of general circulation published in the county where the proceeding is pending, or if no such newspaper is published therein, then in a contiguous county. Jurisdiction shall be complete within 10 days after the date of completing publication of the notice as provided in this section.

(3) Any person interested may at any time before the expiration of the 10 days appear and contest the validity of such proceeding, or of any of the acts or things therein enumerated. Such proceeding shall be tried forthwith and judgment rendered as expeditiously as possible declaring the matter so contested to be either valid or invalid. Any order or judgment in the course of such proceeding may be made and rendered by the judge in vacation or otherwise; and for that

purpose, the court shall be deemed at all times to be in session and the act of the judge in making the order or judgment shall be the act of the court.

(4) Any party may appeal to the Court of Appeals from the final judgment rendered in such proceeding. The court, in inquiring into the regularity, legality or correctness of any proceeding of the municipal corporation or its governing body shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties to the special proceeding, and may approve the proceedings in part and may disapprove and declare illegal or invalid in part other or subsequent proceedings, or may approve or disapprove the proceedings, or may approve the proceedings in part and disapprove the remainder thereof.

(5) Costs of the proceeding may be allowed and apportioned between the parties in the discretion of the court. [Amended by 1975 c.133 §2, 1979 c.284 §69]

33.810 [1955 c.522 §1; repealed by 1967 c.460 §8]

33.820 [1955 c.522 §2; repealed by 1967 c.460 §8]

33.830 [1955 c.522 §3; repealed by 1967 c.460 §8]