

Chapter 55

1993 EDITION

Small Claims

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CROSS REFERENCES

- Administrative supervision over other courts, 1.002
Small claims department of district court, 46.405
Residential Landlord and Tenant Act, tenant counter-claims not to exceed jurisdictional limits of court, 90.370
Waiver of fees and costs for indigents, 21.605
55.120
Deposit in lieu of bail or bond, Ch. 22

JUSTICES' COURTS & CIVIL PROCEEDINGS THEREIN

55.010 [Amended by 1955 c.44 §1; 1959 c.326 §2; repealed by 1963 c.404 §1 (55.011 enacted in lieu of 55.010)]

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

(2) All actions in the justice court for the recovery of money or damages only, excepting class actions and actions providing for statutory attorney fees, where the amount claimed does not exceed \$200, shall be commenced and prosecuted only in the small claims department. Where the amount claimed does not exceed \$2,500, such actions may be commenced and prosecuted in the small claims department subject to the provisions of ORS 55.065 (2)(c).

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

(4) Except as provided in ORS 55.065 (2)(c), the provisions of ORS 55.020 to 55.140 shall apply with regard to proceedings in the small claims department of any justice court. [1963 c.404 §2 (enacted in lieu of 55.010); 1965 c.569 §2; 1973 c.625 §3; 1973 c.812 §7; 1975 c.346 §2a; 1975 c.592 §2; 1983 c.673 §6; 1985 c.367 §3; 1987 c.725 §3; 1989 c.583 §1]

55.020 Commencement of action. An action in the small claims department shall be commenced by the plaintiff appearing in person or by agent or assignee before the court and filing a verified claim in the form prescribed by the justice of the peace along with the fee prescribed by ORS 51.310 (1)(c). [Amended by 1989 c.583 §2]

55.030 Contents of claim. 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 date the claim allegedly accrued. The claim shall include an affidavit signed by the plaintiff and stating that the plaintiff made a bona fide effort to collect the claim from the defendant before filing the claim with the justice court. [Amended by 1977 c.875 §11; 1989 c.583 §3]

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

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

(2) The notice shall be directed to the defendant, naming the defendant, 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 court shall mail the notice and claim by certified mail addressed to the defendant at the last-known mailing address of the defendant 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 accomplished, 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 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 court immediately.

[1989 c.583 §5]

55.050 [Amended by 1965 c.619 §28; 1977 c.875 §12; 1981 s.s. c.3 §95; 1987 c.829 §2; repealed by 1989 c.583 §11]

55.055 Explanation to plaintiff of how notice may be served. The justice of the peace shall provide to each plaintiff who files a claim with the small claims department of

the court of the justice of the peace a written explanation of how notice may be served in actions in the department. [1977 c.875 §21]

55.060 [Amended by 1977 c.875 §13; repealed by 1989 c.583 §11]

55.065 Admission or denial of claim; request for jury trial. Within 14 days after the date of service of the notice and claim upon the defendant as provided in ORS 55.045:

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

(a) Paying to the court the amount of the claim plus the amount of the small claims fee and service expenses paid by the plaintiff. The court 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 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 court 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 court in the form prescribed by the court, accompanied by payment of the appearance fee prescribed by ORS 51.310 (1)(b) together with the trial fee prescribed by ORS 52.410. The request shall designate a mailing address to which a summons and 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. [1989 c.583 §6]

55.070 [Amended by 1957 c.6 §1; 1965 c.619 §29; 1973 c.393 §3; 1977 c.875 §14; 1977 c.877 §14a; 1979 c.284 §87; repealed by 1989 c.583 §11]

55.075 Time and place of hearing; procedure if right to jury trial asserted; fees.

(1) If the defendant demands a hearing in the small claims department of the court, the court 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 the right to a jury trial, the court 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 summons and copy of the complaint by mail on the defendant at the designated address of the defendant. Proof of service of the summons and complaint copy may be made by certificate of the plaintiff or plaintiff's 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 summons and copy of the complaint would be delivered to the defendant in due course of mail. Thereafter, the cause shall proceed as other causes in the justice court, and costs and disbursements shall be allowed and taxed and fees not previously paid shall be charged and collected as provided in ORS 51.310 and 52.410 for other cases tried in justice court, except that the appearance fee for plaintiff shall be an amount equal to the difference between the fee paid by the plaintiff as required by ORS 51.310 (1)(c) and the fee required of a plaintiff by ORS 51.310 (1)(a). [1989 c.583 §8]

55.077 Additional time for appearances; default and dismissal. (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 court shall enter a judgment against the defendant for the relief claimed plus the amount of the small claims fee and service expenses paid by the plaintiff.

(3) If the plaintiff fails within the time provided to file a formal complaint pursuant to ORS 55.075 (3), the court shall:

(a) Dismiss the case without prejudice; and

(b) If the defendant applies therefor in writing to the court not later than 30 days after the expiration of the time provided for the plaintiff to file a formal complaint, refund to the defendant the amount of the jury trial fee paid by the defendant under ORS 55.065 (2)(c).

(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. [1989 c.583 §9]

55.080 Formal pleadings unnecessary; issuance of attachment, garnishment or execution; costs of execution taxable. No formal pleading, other than the claim and notice, shall be necessary. The hearing and disposition of all actions shall be informal, the sole object being to dispense justice between the litigants promptly. No attachment, garnishment or execution shall issue from the small claims department on any claim except as provided in this chapter. A prevailing party's costs in securing and service of such execution shall be taxed against the other party and recoverable as part of the judgment. [Amended by 1971 c.179 §1; 1977 c.875 §15]

55.090 Right of attorneys or persons not a party to appear; witnesses; disposition of controversy; appearance by attorney not required for certain parties. (1) Except as may otherwise be provided by ORS 55.040, no attorney at law nor any person other than the plaintiff and defendant shall become involved in or in any manner interfere with the prosecution or defense of the litigation in the department without the consent of the justice of the justice's court, nor shall it be necessary to summon witnesses. But the plaintiff and defendant may offer evidence in their behalf by witnesses appearing at the hearing, and the justice may informally consult witnesses or otherwise investigate the controversy and give judgment or make such orders as the justice deems right, just and equitable for the disposition of the controversy.

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

(3) In any small claims hearing provided for under ORS 742.520, an expert witness may appear by affidavit and medical records may be submitted directly to the court. [Amended by 1973 c.625 §4; 1987 c.158 §8; 1993 c.282 §3]

55.095 Counterclaim; procedure; fee; transfer of jurisdiction. (1) 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 55.045, the defendant may have against the plaintiff and that arises out of the same transaction or occurrence that is the subject matter of the claim filed by the plaintiff.

(2) If the amount of the counterclaim asserted by the defendant exceeds \$2,500, the justice of the peace shall strike the counterclaim and proceed to hear and dispose of the case as though the counterclaim had not been asserted unless the defendant files with the counterclaim a motion requesting that the case be transferred from the small claims department to a court of appropriate jurisdiction and an amount to pay the costs of the transfer. After the transfer the plaintiff's claim will not be limited to the amount stated in the claim filed with the justice of the peace, though it must involve the same controversy.

(3)(a) If the amount or value of the counterclaim exceeds the jurisdictional limit of the justice's court for a counterclaim and the defendant files a motion requesting transfer and an amount to pay the costs of transfer as provided in subsection (2) of this section, the case shall be transferred to the district or circuit court for the county in which the justice's court is located, whichever court is the court of appropriate jurisdiction, and be governed as provided in ORS 52.320 for transfers to the circuit court. The justice court shall notify the plaintiff and defendant, by mail within 10 days following the order of transfer, of the transfer. The notice to the plaintiff shall contain a copy of the counterclaim and shall inform the plaintiff as to further pleading by the plaintiff in the court of appropriate jurisdiction.

(b) Upon filing the motion requesting transfer, the defendant shall pay to the court of appropriate jurisdiction an amount equal to the difference between the fee paid by the defendant as required by ORS 51.310 (1)(c) and the appearance fee for a defendant in the court of appropriate jurisdiction. [1977 c.875 §22; 1981 s.s. c.3 §96; 1983 c.673 §8, 1985 c.367 §4; 1987 c.725 §4; 1987 c.829 §3; 1989 c.583 §7]

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

55.110 Conclusiveness of judgment; appeal; costs and fees on appeal. The judgment of the court shall be conclusive upon the plaintiff in respect to the claim filed by the plaintiff and upon the defendant in respect to a counterclaim asserted by the defendant. The defendant may appeal if dissatisfied in respect to the claim filed by the plaintiff. The plaintiff may appeal if dissatisfied in respect to a counterclaim asserted by the defendant. A party entitled to appeal may, within 10 days after the entry of the judgment against the party, appeal to the

district court for the county in which the justice's court is located, or if there is no district court for the county, to the circuit court for the county. If final judgment is rendered against the party appealing in the appellate court, that party shall pay, in addition to the judgment, an attorney's fee to the other party in the sum of \$10. Appeals from the small claims department shall only be allowed in cases in which appeals would be allowed if the action were instituted and the judgment rendered in the justices' courts, as is provided by law. [Amended by 1977 c.875 §17; 1985 c.342 §10]

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

 In the _____ Court for _____
 District, _____ County,
 Oregon, _____, Plaintiff, vs. _____
 Defendant. Comes now _____, a resident
 of _____ County, Oregon, and appeals
 from the decision of the small claims depart-
 ment of the justice's court for _____ Dis-
 trict, _____ County, Oregon, wherein a
 judgment for _____ dollars was awarded
 against the appellant on the _____ day
 of _____, 19____.
 _____, Appellant.

(2) All appeals shall be filed with the justice of the peace and accompanied by a bond, with satisfactory surety, to secure the payment of the judgment, costs and attorney's fees, as provided in ORS 55.110. The appeal shall be tried in the appellate court without any other pleadings than those required in the justice's court originally trying the cause. All papers in the cause shall be certified to the appellate court as is provided by law in other cases of appeals in civil actions in justices' courts. The appellate court may require any other or further statements or information it may deem necessary for a proper consideration of the controversy. The appeal shall be tried in the appellate court without a jury. There shall be no appeal from any judgment of the appellate court rendered upon the appeal, but such judgment shall be final and conclusive. [Amended by 1977 c.875 §18; 1985 c.342 §11]

55.130 Enforcement of judgment when no appeal is taken; fees. (1) If no appeal is

taken by a party against whom a judgment to make payment is rendered and the party fails to pay the judgment according to the terms and conditions thereof, the justice of the peace before whom the hearing was had, may, on application of the prevailing party, certify the judgment in substantially the following form:

 In the Justice Court for _____ Dis-
 trict, _____ County, Oregon.

 Plaintiff,
 vs.

 Defendant.

In the Small Claims Department

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

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

 Justice of the Peace
 Sitting in the Small
 Claims Department.

(2) Upon the payment of a fee of \$3.75 the justice of the peace shall forthwith enter the judgment transcript on the docket of the justice court. Thereafter execution and other process on execution provided by law may issue thereon as in other cases of judgments of justices' courts, and transcripts of the judgments may be filed and entered in judgment dockets in circuit courts with like effect as in other cases. [Amended by 1965 c.619 §30; 1977 c.875 §19; 1987 c.829 §4]

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