

Chapter 1

Courts and Judicial Officers Generally

1.002

LAW REVIEW CITATIONS: 46 OLR 3.

1.010

NOTES OF DECISIONS

A court has inherent power to establish rules for the purpose of methodically disposing of cases. *Carney v. Barrett*, (1871) 4 Or 171, 175; *Coyote G. & S.M. Co. v. Ruble*, (1881) 9 Or 121, 125; *State v. Birchard*, (1899) 35 Or 484, 59 P 468; *Zeuske v. Zeuske*, (1909) 55 Or 65, 103 P 648, 105 P 249, Ann Cas 1912A, 557; *Francis v. Mut. Life Ins. Co.*, (1912) 61 Or 141, 114 P 921; *Schnitzer v. Stein*, (1920) 96 Or 343, 189 P 984.

This statute is but declaratory of the power inherent in all courts of record to establish rules relating to the disposition of business before such courts. *Coyote G. & S.M. Co. v. Ruble*, (1881) 9 Or 121, 125; *Zeuske v. Zeuske*, (1909) 55 Or 65, 103 P 648, 105 P 249, Ann Cas 1912A, 557; *Francis v. Mut. Life Ins. Co.*, (1912) 61 Or 141, 114 P 921.

Once a court rule is promulgated it is equally binding upon the court and litigant and must be applied in all cases. *Coyote G. & S.M. Co. v. Ruble*, (1881) 9 Or 121, 125; *State v. Birchard*, (1899) 35 Or 484, 59 P 468; *Francis v. Mut. Life Ins. Co.*, (1912) 61 Or 141, 114 P 921.

Parties may be relieved from default in complying with rules adopted for the dispatch of business if such relief is justified. *Neppach v. Jones*, (1895) 28 Or 277, 39 P 999, 42 P 519; *Garnsey v. County Ct.*, (1898) 33 Or 201, 54 P 539, 1089; *Blank v. Walker*, (1898) 33 Or 372, 53 P 1133; *Reynolds v. Jackson County*, (1898) 33 Or 422, 53 P 1072.

The time counsel should occupy in addressing the jury may be limited by the court. *Hurst v. Burnside*, (1885) 12 Or 520, 8 P 888.

Ministerial officers should refer disputes to the court and follow its direction, as prescribed by this section. *Schneider v. Sears*, (1885) 13 Or 69, 75, 8 P 841.

Noncompliance with rule requiring answer to be served on plaintiff's attorney before filing justified striking the answer. *Kosher v. Stuart*, (1913) 64 Or 123, 121 P 901, 129 P 491.

A court rule in conflict with the statute must yield thereto. *Schnitzer v. Stein*, (1920) 96 Or 343, 189 P 984.

Notice of motion to extend the time to file the transcript on appeal cannot be required by rule. *In re Purdin's Estate*, (1929) 128 Or 403, 240 P 890.

FURTHER CITATIONS: *Lessig v. Conboy*, (1959) 219 Or 373, 347 P2d 98.

LAW REVIEW CITATIONS: 6 OLR 36.

1.025

NOTES OF DECISIONS

Manadamus is designed to compel a court to perform its ministerial duties when they involve no discretion or judg-

ment. *State ex rel. Nilsen v. Cushing*, (1969) 253 Or 262, 453 P2d 945.

1.040

NOTES OF DECISIONS

Assertion in petition for review that a sitting of the court was private is a mere conclusion and so insufficient. *Sustar v. Marion County Court*, (1921) 101 Or 657, 201 P 445.

Order for private hearing in divorce proceeding does not prohibit Supreme Court from discussing record on appeal. *Olman v. Olman*, (1955) 205 Or 216, 286 P2d 662.

ATTY. GEN. OPINIONS: School board's authority to hold closed meetings, 1966-68, p 286.

1.050

NOTES OF DECISIONS

This statute is designed to speed the administration of judicial business and does not invalidate judgments rendered after the three-month period has expired. *Kellogg v. Kellogg*, (1928) 123 Or 639, 263 P 385.

The filing of a false certificate does not in itself terminate the tenure of office. *Fehl v. Jackson County*, (1945) 177 Or 200, 161 P2d 782.

ATTY. GEN. OPINIONS: Prisoner in penitentiary making complaint, 1956-58, p 110.

1.055

NOTES OF DECISIONS

What is a reasonable time is ordinarily a matter within the discretion of the trial court. *Miller v. Miller*, (1961) 228 Or 301, 365 P2d 86.

FURTHER CITATIONS: *Slipp v. Amato*, (1962) 231 Or 512, 373 P2d 673; *Koennecke v. Koennecke*, (1964) 239 Or 274, 397 P2d 203; *State v. Voshell*, (1967) 247 Or 534, 430 P2d 1010.

LAW REVIEW CITATIONS: 39 OLR 118.

1.060

NOTES OF DECISIONS

An indictment dated on Sunday is not void. *State v. Norton*, (1888) 16 Or 105, 17 P 744.

Service of process upon a legal holiday may be pleaded in abatement or set aside on motion; but a notice of contest of election is not technically "process." *Whitney v. Blackburn*, (1889) 17 Or 564, 570, 21 P 874, 11 Am St Rep 857.

Notice to produce a document may be given on a nonjudicial day. *Sugar Pine Lbr. Co. v. Garrett*, (1895) 28 Or 168, 42 P 129.

Statutes permitting judicial business on Sunday shall be strictly construed. *Ex parte Tice*, (1897) 32 Or 179, 49 P 1038.

Notice of appeal may be served on a legal holiday. *Ferrari*

v. Beaver Hill Coal Co., (1909) 54 Or 210, 94 P 181, 95 P 498, 102 P 175, 1016.

Since an election contest cannot be initiated on election day, that day will not be included in computing time allowed by statute for serving and filing notice of contest. *Osborne v. Zimmerman*, (1940) 165 Or 92, 105 P2d 1097.

ATTY. GEN. OPINIONS: Judicial business that justice of the peace can transact on Sunday, 1920-22, p 121; acts of county clerk relating to taxes as a transaction of judicial business on a holiday, 1932-34, p 174; election not a judicial act, 1940-42, p 349; meeting of board of examiners in watch-making on Sunday, 1942-44, p 89; authority of justice of the peace to accept pleas and impose sentences on Sunday, 1948-50, p 289.

LAW REVIEW CITATIONS: 26 OLR 202.

1.070

NOTES OF DECISIONS

The judgment should be reversed where it appears that the trial was not held at the place designated by law, and where it does not appear that the place where it was held had been properly selected or designated. *Baisley v. Baisley*, (1887) 15 Or 183, 13 P 888.

A court must be held at the place appointed by law. *Hanley v. City of Medford*, (1910) 56 Or 171, 108 P 188.

1.080

CASE CITATIONS: *Lee v. Lee*, (1969) 1 Or App 115, 459 P2d 442, Sup Ct review denied.

1.110

NOTES OF DECISIONS

The failure of a court to transact business for several days does not cause adjournment for the term as long as a judge is in attendance from day to day. *State v. Maddock*, (1911) 58 Or 542, 115 P 426.

FURTHER CITATIONS: *State v. Turpin*, (1909) 54 Or 1909, 103 P 438; *Russell v. Crook County Court*, (1915) 75 Or 168, 145 P 653, 146 P 806.

1.130

NOTES OF DECISIONS

When a court has exercised its discretionary power to adjourn a trial its act will not be reviewed on appeal unless it contravenes some express statutory provision or is a manifest abuse of this power. *Young v. Patton*, (1881) 9 Or 195.

The court may adjourn a trial to enable a party to obtain certain papers which are essential to a meritorious defense. *Id.*

When a party requests the court to continue, postpone or adjourn a case because of lack of evidence, the moving party must also submit the affidavit required by statute to support the motion. *State v. Hill*, (1965) 240 Or 313, 401 P2d 43.

Although the court adjourned during a term without setting a day for convening, it could convene and transact business where due notice was given. *Ex parte Harrell*, (1910) 57 Or 95, 110 P 493.

1.150

ATTY. GEN. OPINIONS: Sufficiency of description of real property in summons, 1922-24, p 213; election campaign card, 1958-1960, p 11.

1.160

NOTES OF DECISIONS**1. In general**

As a general principle a court that has jurisdiction to render a judgment or decree has authority to enforce it. *State v. Hodgin*, (1915) 76 Or 480, 146 P 86, 149 P 530; *In re Barker*, (1917) 83 Or 702, 164 P 382.

Issues involved in claims under Workmen's Compensation Act, although not covered in the procedure provided by the Act, could be properly framed and tried in circuit court under the authority provided by this section. *Butterfield v. State Ind. Acc. Comm.*, (1924) 111 Or 149, 223 P 941, 226 P 216; *Meaney v. State Ind. Acc. Comm.*, (1925) 113 Or 371, 227 P 305, 232 P 789.

This section wipes out common-law procedure, as such, and permits the court to accept or reject it in cases not covered by procedural statutes. *Williams v. Pac. Sur. Co.*, (1913) 66 Or 151, 127 P 145, 131 P 1021, 132 P 959, 133 P 1186.

By virtue of this section a court having jurisdiction under ORS 107.210 to adjudicate suit for separate maintenance also has the power to determine the validity of a Nevada divorce decree set up as a defense. *Kelley v. Kelley*, (1948) 183 Or 169, 191 P2d 656.

This section does not give the Supreme Court jurisdiction to entertain an appeal from an order denying a motion in the nature of *coram nobis*, since it does not confer jurisdiction but provides for suitable process to execute existing jurisdiction. *State v. Endsley*, (1958) 214 Or 537, 331 P2d 338.

2. Suitable process

A circuit court can issue execution on its judgment rendered against the estate of a spendthrift on appeal from a county court. *In re Barker*, (1917) 83 Or 702, 164 P 382.

In partition proceedings the court may enforce a decree requiring payment of owelty. *Thompson Estate Co. v. Kamm*, (1923) 107 Or 61, 213 P 417, 28 ALR 722.

The writ of prohibition is available in this state as a means whereby a superior court may confine inferior tribunals to the powers which they actually possess. *Southern Pac. Co. v. Heltzel*, (1954) 201 Or 1, 268 P2d 605.

3. Mode of procedure

If an appellant refuses to advance the trial fee, the court may dismiss the appeal and affirm the judgment of the court below. *Bailey v. Frush*, (1873) 5 Or 136, 140.

The court, in an attachment proceeding on a note, is not required to allow an assignee of the defendant to interplead. *Tichenor v. Coggins*, (1880) 8 Or 270.

Although the procedural statutes do not so provide, a mortgagor must be given an opportunity to contest lien claims of codefendants. *Ladd v. Mason*, (1882) 10 Or 308, 316.

If the sheriff is disqualified, the court may appoint some suitable person to select a special jury. *State v. Savage*, (1899) 36 Or 191, 201, 60 P 610, 61 P 1128.

This section does not authorize judgment against a garnishee who has given a certificate of indebtedness. *Murphy v. Bjelik*, (1918) 87 Or 329, 169 P 520, 170 P 723.

Even though qualified male jurors are on the panel, the court can draw women jurors from the regular jury list so as to select an equal number of men and women for a rape case. *State v. Chase*, (1923) 106 Or 263, 211 P 920.

The court does not enforce a California decree awarding alimony, but the decree is regarded as a basis for an Oregon decree having the same effect in Oregon as the California decree has in that state. *Cousineau v. Cousineau*, (1936) 155 Or 184, 63 P2d 897, 109 ALR 643.

A court may not restrain the prosecution of a claim for

damages at the instance of an insurance company on the ground that a policy issued by that company to the defendant has been invalidated with reference to plaintiff's claim. *Brune v. McDonald*, (1938) 158 Or 364, 75 P2d 10.

The Supreme Court could prescribe the mode of proceeding to invoke a statute giving relief from excessive fines or excessive, cruel or unusual punishment imposed by judgment of conviction. *State v. Ridder*, (1949) 185 Or 134, 202 P2d 482.

This section does not require the court to order the state to advance funds for the payment of witness fees and travel expenses for out-of-state witnesses. *State v. Blount*, (1953) 200 Or 35, 264 P2d 419, cert. den., 347 US 962, 98 L Ed 1105, 74 S Ct 711.

This section gives the court power to distribute condemnation funds to claimants in an equitable proceeding. *State Hwy. Comm. v. Burk*, (1954) 200 Or 211, 265 P2d 783.

FURTHER CITATIONS: *Aiken v. Aiken*, (1885) 12 Or 203, 6 P 682; *Mitchell v. Powers*, (1888) 16 Or 487, 19 P 647; *Finn v. Hoyt*, (1892) 52 Fed 83; *In re McCormick's Estate*, (1914) 72 Or 608, 143 P 915; *Holland-Washington Mtg. Co. v. County Ct.*, (1920) 95 Or 668, 188 P 199; *Walters v. Waggener*, (1922) 104 Or 682, 208 P 753; *Patterson v. Horsefly Irr. Dist.*, (1937) 157 Or 1, 69 P2d 282, 70 P2d 336; *Nelson v. Smith*, (1937) 157 Or 292, 69 P2d 1072; *Nickerson v. Mecklem*, (1942) 169 Or 290, 126 P2d 1095; *Varley v. Consol. Tbr. Co.*, (1943) 172 Or 157, 139 P2d 584; *Bartlett v. Bartlett*, (1944) 175 Or 215, 152 P2d 402; *Freightways Inc. v. Flagg*, (1947) 180 Or 442, 176 P2d 239, 177 P2d 422; *Rodda v. Rodda*, (1948) 185 Or 140, 200 P2d 616; *Esselstyn v. Casteel*, (1955) 205 Or 344, 286 P2d 665, 288 P2d 214, 215; *State v. Huffman*, (1956) 207 Or 372, 297 P2d 831; *State v. Waterhouse*, (1957) 209 Or 424, 307 P2d 327; *Waters v. Bigelow*, (1957) 210 Or 317, 310 P2d 624; *Lefler v. Lefler*, (1959) 218 Or 231, 344 P2d 754; *Lessig v. Conboy*, (1959) 219 Or 373, 347 P2d 98; *Grayson v. Grayson*, (1960) 222 Or 507, 352 P2d 738; *McCain v. State Tax Comm.*, (1961) 227 Or 486, 360 P2d 778, 363 P2d 775; *State v. Clark*, (1964) 237 Or 596, 392 P2d 643; *City of Woodburn v. Domogalla*, (1964) 1 OTR 292; *Rogers v. King*, (1967) 245 Or 627, 423 P2d 761; *Ungers' Co. v. Lincoln County*, (1971) 5 Or App 250, 483 P2d 81.

ATTY. GEN. OPINIONS: Courts that have authority to declare what property is subject to forfeiture for violation of fish and game laws, 1920-22, p 212; authority of circuit court in regard to the activities of the Superintendent of Banks, 1924-26, p 658; procedure for seizing and forfeiting slot machines which may be used for other than gambling purposes, 1952-54, p 197; procedure in corrupt practices Act proceeding, 1952-54, p 258; discharging putative father without public proceedings, 1962-64, p 106.

LAW REVIEW CITATIONS: 12 OLR 213; 39 OLR 105; 50 OLR 23.

1.170

NOTES OF DECISIONS

A contract for the lease of a building for a courthouse by the county in excess of the constitutional debt limitation was not valid as an effort to meet the needs of the circuit court. *Brewster v. Deschutes County*, (1931) 137 Or 100, 1 P2d 607.

ATTY. GEN. OPINIONS: Circuit court supplies as a county expense, 1936-38, p 286; reimbursing district judge for travel outside county to purchase supplies, 1964-66, p 409.

1.210

ATTY. GEN. OPINIONS: County commissioner as judicial officer, 1950-52, p 332.

1.230

NOTES OF DECISIONS

A court consists of persons officially assembled at a designated time and place for the administration of justice. *Marsden v. Harlocker*, (1906) 48 Or 90, 97, 85 P 328, 120 Am St Rep 786; *Hanley v. City of Medford*, (1910) 56 Or 171, 108 P 188.

A judge, during vacation, may not hear and determine a charge of contempt. *State v. McKinnon*, (1880) 8 Or 487, 492.

The preliminary order for the examination of a judgment debtor may be made by the judge, and the final order requiring satisfaction of the judgment may be made by the court. *State v. Downing*, (1901) 40 Or 309, 319, 58 P 863, 66 P 917.

When the law prescribes a time and place for holding court, proper time and place is essential for jurisdiction. *Hanley v. City of Medford*, (1910) 56 Or 171, 108 P 188.

A judge, as distinguished from a court, cannot declare a forfeiture of bail. *Cameron v. Burger*, (1912) 60 Or 458, 120 P 10.

FURTHER CITATIONS: *Holland-Washington Mtg. Co. v. County Court*, (1920) 95 Or 668, 188 P 199; *Neal v. Haight*, (1949) 187 Or 13, 206 P2d 1197; *Lee v. Lee*, (1969) 1 Or App 115, 459 P2d 442, Sup Ct review denied.

ATTY. GEN. OPINIONS: Authority of circuit judge in probate matters when county judge is absent, 1944-46, p 63.

1.240

CASE CITATIONS: *State v. Kaiser*, (1890) 20 Or 50, 23 P 964, 8 LRA 584; *State v. Brownell*, (1916) 79 Or 123, 158 P 428; *De Meyer v. Hurlburt*, (1932) 139 Or 507, 11 P2d 286; *State v. Driscoll*, (1935) 151 Or 363, 50 P2d 581; *State ex rel. Leman v. Leman*, (1964) 238 Or 446, 395 P2d 161; *State ex rel. Oregon State Bar v. Lenske*, (1965) 243 Or 477, 407 P2d 250; *State v. Edwards*, (1968) 252 Or 325, 446 P2d 659, 449 P2d 448.

LAW REVIEW CITATIONS: 15 OLR 79; 40 OLR 99.

1.250

NOTES OF DECISIONS

Inability without fault to obey a court order is a complete defense to a charge of contempt for failure to obey. *State v. O'Malley*, (1970) 255 Or 544, 469 P2d 36, rev'g 1 Or App 239, 461 P2d 832. Overruling *State v. O'Malley*, (1969) 248 Or 601, 435 P2d 812.

LAW REVIEW CITATIONS: 15 OLR 79.

1.260

CASE CITATIONS: *Lee v. Lee*, (1969) 1 Or App 115, 459 P2d 442, Sup Ct review denied.

1.310

ATTY. GEN. OPINIONS: Amount of service needed for retirement pay, 1942-44, p 281.

LAW REVIEW CITATIONS: 36 OLR 261.

1.314

NOTES OF DECISIONS

A declaration of candidacy, for a judicial office offered for the election preceding the biennium in which the office would possibly become vacant by mandatory retirement, was properly refused. State ex rel. McCormick v. Appling, (1964) 236 Or 485, 389 P2d 677.

ATTY. GEN. OPINIONS: Retirement benefits of judge ceasing to hold office after age 70 and before 16 years of service, 1960-62, p 96; application of 1969 law to circuit judges with prior service as district judge, (1970) Vol 35, p 7.

1.318

ATTY. GEN. OPINIONS: Retirement benefits of judge ceasing to hold office after age 70 and before 16 years of service, 1960-62, p 96; application of 1969 law to circuit judges with prior service as district judge, (1970) Vol 35, p 7.

1.322

ATTY. GEN. OPINIONS: Retirement benefits of judge ceasing to hold office after age 70 and before 16 years of service, 1960-62, p 96.

1.326

NOTES OF DECISIONS

A declaration of candidacy, for a judicial office offered for the election preceding the biennium in which the office would possibly become vacant by mandatory retirement, was properly refused. State ex rel. McCormick v. Appling, (1964) 236 Or 485, 389 P2d 677.

ATTY. GEN. OPINIONS: Retirement benefits of judge ceasing to hold office after age 70 and before 16 years of service, 1960-62, p 96.

1.330

LAW REVIEW CITATIONS: 36 OLR 261.

1.340

ATTY. GEN. OPINIONS: Applicability of 1949 amendment to a person who retired before the passage of the amendment, 1948-50, p 286; contributions required for widow's pension, 1952-54, p 164; constitutionality of widow's pension, 1956-58, p 155; right of judge to receive retirement benefits and compensation for serving as judge pro tempore, 1958-60, p 136; pension for widows under 1959 amendment of this section, 1958-60, p 206; pro rata distribution of retirement funds when retirement occurs in mid-month, 1958-1960, p 412; pro rata distribution of widow's pension, 1958-60, p 412; widow's right to judge's retirement distribution, 1958-60, p 412; disposition of warrant drawn on Judges' Retirement Fund and not paid at time of death, 1960-62, p 113; withholding for health insurance, 1962-64, p 426; application of 1969 law to circuit judges with prior service as district judge, (1970) Vol 35, p 7.

LAW REVIEW CITATIONS: 36 OLR 261.

1.350

ATTY. GEN. OPINIONS: Status of money received from a judge on leave, 1942-44, p 203.

LAW REVIEW CITATIONS: 36 OLR 261.

1.355

ATTY. GEN. OPINIONS: Effect of 1969 amendment on benefits payable, (1970) Vol 34, p 942.

1.360

CASE CITATIONS: Adams v. Dept. of Rev., (1970) 4 OTR 54.

ATTY. GEN. OPINIONS: Contribution while on leave of absence, 1942-44, p 203; contributions required for widow's pension, 1952-54, p 164; widow's right to judge's retirement distribution, 1958-60, p 412; disposition of warrant drawn on Judges' Retirement Fund and not paid at time of death, 1960-62, p 113; including salary of judge ineligible to participate, 1962-64, p 345.

LAW REVIEW CITATIONS: 36 OLR 261.

1.380

ATTY. GEN. OPINIONS: Commencement of deductions when consent is needed, 1942-44, pp 242, 430; effect of absence on leave on failure to file consent within 60 days, 1944-46, p 318; determination of pension due widow of judge retired after July 1963, 1962-64, p 345; effect of 1969 amendment on benefits payable, (1970) Vol 34, p 942.

LAW REVIEW CITATIONS: 36 OLR 261.

1.385

ATTY. GEN. OPINIONS: Application of 1969 law to circuit judges with prior service as district judge, (1970) Vol 35, p 7.

1.510

ATTY. GEN. OPINIONS: Payment of expenses of committee members, 1958-60, p 306; paying travel expenses for attendance at traffic court conference, 1966-68, p 275.

1.520

ATTY. GEN. OPINIONS: Proceedings not required to use the uniform traffic citation and complaint, 1960-1962, p 267; collection of assessment for police training with bail deposit, (1971) Vol 35, p 740.

1.810 to 1.840

LAW REVIEW CITATIONS: 6 WLJ 380.

1.810

LAW REVIEW CITATIONS: 35 OLR 177.

1.840

LAW REVIEW CITATIONS: 35 OLR 177.