

# AN OVERVIEW OF THE OREGON JUDICIARY



## ***Introduction***

There has been much discussion in Oregon of the role of judges and of judicial independence as well as issues related to the election of judges. The League of Women Voters® of Oregon has undertaken a study to update and expand the current League position on the judicial system, which we adopted in 1979.

We recognize the need to inform the public of the important, and sometimes overlooked, role of the judiciary in our government. Basic information—such as what courts exist in Oregon, the work of each of those courts, and how judges do their work—is fundamental to an understanding of the judicial branch. In this first publication of our study we offer an overview of these and other related topics. In the next publication we will look in detail at some of the controversial issues.



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# An Overview of the Oregon Judiciary

*“The court room is the one place where the citizen comes into daily contact with his Government... [W]hen he enters the door of a court of justice, he leaves behind him all distinctions, all advantages and disadvantages, all questions of social or political influence, all the handicap of poverty, all the prestige of wealth, and stands mantled only with the invisible and impermeable robe of simple citizenship. It is so because he is in the place where the law must prevail. There is, therefore, no place in this ideal court for any other influence than the judge’s sense of justice and of his loyalty to the law.”*

--Judge Martin K. Pipes, remarks to Oregon State Bar Association, November 17, 1909.<sup>1</sup>

## ***History of the Oregon Judiciary***

### **Territorial Government (1848-1859)**

In 1848, Congress passed the Oregon Territorial Act making Oregon a Territory of the United States. The Territorial Act created a court system that included a supreme court, district courts, probate courts, and justices of the peace. The President of the United States appointed the justices of the territorial supreme court, who also served as trial court judges. But the court system did not operate in a coherent manner until 1852-53 when President Franklin Pierce appointed George Williams, Cyrus Olney and Matthew P. Deady as Supreme Court justices. They established a cohesive legal system for the Oregon Territory and began publishing court decisions in *Oregon Reports*.

## **The Oregon Constitution and the Balance of Powers (1859)**

*“I know of no higher praise that can bestow upon a judge than to say of him that he administered the law without fear, favor or affection. No hand has been so strongly and deeply impressed upon the legislative and judicial history of Oregon as that of Judge Deady.” —Judge George H. Williams, on his colleague, Judge Matthew P. Deady, chair of the committee formed to draft the Oregon Constitution.<sup>2</sup>*

Largely based on the Indiana Constitution of 1851, Oregon’s Constitution was adopted by its citizens in 1858 and ratified by Congress in 1859. The Constitution divided state government into three separate branches—executive, legislative, and judicial—paralleling the organization of the federal government.<sup>3</sup>

Oregon’s Constitution vested judicial power in a Supreme Court, circuit courts, and county courts. It authorized granting limited

<sup>1</sup> History of the Bench and Bar of Oregon, (Portland, Oregon: Historical Publishing Co., 1910), II.

<sup>2</sup> History of the Bench and Bar, 26.

<sup>3</sup> Oregon Constitution, Article III, Section 1.

judicial powers to justices of the peace and municipal courts.<sup>4</sup> The right to a trial by jury was “inviolable.”<sup>5</sup>

The Constitution originally authorized four Supreme Court justices “to be chosen in districts by the electors thereof.”<sup>6</sup> The number of justices could never exceed seven.<sup>7</sup> The Supreme Court justices would perform “double duty,” acting as both Supreme Court justices and circuit court judges for the four districts then in existence. The Constitution directed that circuit courts be held at least twice yearly “in each County organized for judicial purposes.”<sup>8</sup> Circuit courts were trial courts (as they are today) and had all judicial power not vested exclusively in some other court.<sup>9</sup> The Supreme Court could “revise the final decisions of the circuit courts”<sup>10</sup>, but no Supreme Court justice could participate in any appeal from a trial over which he had presided in the circuit court.<sup>11</sup>

The Constitution also provided that once the state’s “white” population reached two hundred thousand, the Legislature had the authority to change the character of the judiciary by providing for the election of Supreme and circuit court judges in two “distinct classes” with different responsibilities. Once the Legislature enacted this plan, Supreme Court justices would no longer have circuit court duties.<sup>12</sup>

## Growth of the Oregon Court System (1859-1981)

In 1878 the Legislature created the two classes of judges, thereby making the Supreme Court and the circuit courts separate and distinct entities. The legislation directed the Governor to appoint three Supreme Court justices and five circuit court judges to hold office until their successors were elected and qualified.<sup>13</sup>

In 1909 the Legislature increased the number of Supreme Court justices to five. In 1910 the Constitution was changed by initiative petition to provide that the “judges of the Supreme and other courts shall be elected by the legal voters of the state or of their respective districts for a term of six years.”<sup>14</sup> In 1913 the Legislature increased the number of Supreme Court justices to seven, the number still in effect today.<sup>15</sup> Recognizing the need for expertise in deciding tax cases, the Legislature created the Tax Court in 1961. It was the first state tax court in the nation.<sup>16</sup>

By 1969 the caseload of Oregon’s trial courts<sup>17</sup> and Supreme Court had increased greatly due to the state’s growth. To relieve pressure on the Supreme Court, the Legislature created the Oregon Court of Appeals as an intermediate reviewing court with five judges. Currently the court has ten judges.

Until 1981 the state paid the salaries of circuit court judges, while county governments met all other costs of the circuit court operations within their boundaries. The counties’

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<sup>4</sup> Or. Const., Article VII (Original), Section 1.

<sup>5</sup> Or. Const., Article I, Section 17. The right to a jury in civil cases was later limited to cases involving claims over \$750. See Or. Const., Article VII (Amended), Section 3.

<sup>6</sup> Or. Const., Article VII (Original), Section 2.

<sup>7</sup> Or. Const., Article VII (Original), Section 2

<sup>8</sup> Or. Const., Article VII (Original), Section 8.

<sup>9</sup> Or. Const., Article VII (Original), Section 9.

<sup>10</sup> Or. Const., Article VII (Original), Section 6.

<sup>11</sup> Or. Const., Article VII (Original), Section 6.

<sup>12</sup> Or. Const., Article VII (Original), Section 10.

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<sup>13</sup> Sherry Smith, “An Historical Sketch of Oregon’s Supreme Court,” Oregon Law Review, Vol. 55 (1976):85, 89

<sup>14</sup> Or. Const., Article VII (Amended), Section 1.

<sup>15</sup> Smith, 91.

<sup>16</sup> *Smith*, 93; Oregon Revised Statutes 305.405.

<sup>17</sup> By that time, district courts had been established to hear misdemeanors, violations and minor civil claims. District court judges usually shared the same courthouses with circuit court judges.

costs increased substantially during the 1960s as the result of U.S. Supreme Court decisions involving the rights of criminal defendants, especially the right to court-appointed counsel for those who could not afford to pay their own lawyers. A state task force, created in 1979 to study the court-funding problem, recommended that state government take over the financial responsibility for all circuit court operations, leaving the counties responsible for providing and maintaining circuit court facilities only.

### **The Oregon Judicial Department (1981-present)**

*"[A]s a matter of statewide concern, it is in the best interests of the people of this state that the judicial branch . . . be funded and operated at the state level."<sup>18</sup>*

Following the task force's recommendation, the 1981 Legislature passed a new Chapter One of the Oregon Revised Statutes (ORS) defining the unified and state-funded court system and naming it the Oregon Judicial Department.<sup>19</sup> Under the new law, the Chief Justice of the Oregon Supreme Court became presiding judge and administrative head of the department, with administrative authority and supervision over all the courts of the state. The Chief Justice's new statutory duties included setting court staffing levels, establishing personnel policies for judges, establishing Judicial Department budgets and implementing efficient procedural rules. The Chief Judge of the Court of Appeals and the presiding judge of each judicial district were to administer their respective courts, but they were appointed by the Chief Justice from members of each

<sup>18</sup> ORS 1.001.

<sup>19</sup> According to ORS 1.165 and 1.167 (now renumbered as ORS 1.185 and 1.187), counties were to provide courtrooms, offices and jury rooms, but the state would provide all other necessary property for court operations, including supplies and equipment.

court. The legislation also created a "state court administrator" position for carrying out the administrative responsibilities of the Chief Justice<sup>20</sup> and authorized the presiding judge of each circuit court to appoint a "trial court administrator."<sup>21</sup>

By act of the Legislature, the limited-jurisdiction trial courts known as "district courts" merged with the circuit courts on January 15, 1998. District courts had heard only misdemeanors, violations, and smaller civil claims. The consolidation left the circuit courts as the single trial court of general jurisdiction.



### **Role of the Oregon Judiciary**

The role of the Oregon Judicial Department is to provide a neutral and unbiased forum to resolve disputes according to law. Oregon state courts adjudicate disputes brought by people, corporations, business organizations, state and local governments, and other private and governmental entities. The courts' decisions are based on the constitutions and laws of the United States and of Oregon; city and county ordinances, rules and regulations; common law; and, sometimes, when the facts or the law require, on the law of other states or countries. Oregon state courts also facilitate the resolution of many disputes through arbitration, mediation, and judicial settlement conferences.

<sup>20</sup> ORS 8.110.

<sup>21</sup> ORS 8.195.

## ***A Judge's Responsibility to the Rule of Law***

As the roles of the three branches of government are different, so the work of a judge, and how a judge does his work, are different from the work and methods used by executive officers and legislators.

The legislative branch enacts law in the form of statutes, and the executive branch administers the law. The Legislature may change laws by enacting new statutes or amending old ones, but until that happens, both branches must follow the law as written. Since officials in the legislative and executive branches are elected, they consider public opinion as a normal part of their work and frequently reach out for public comment on legislative issues. Judges have a very different role.

Although Oregon judges also run for election, they do not and cannot rely on public opinion in their work. Under our system, judges must make their decisions based on the facts of the case before them and upon the applicable law, independent of the pressure of public opinion. Judges are responsible for applying established law even when a majority of the people wants a result contrary to established law.

What “the applicable law” is requires some explanation. Judges must follow a hierarchy of law that they apply to the facts presented by the parties in the matter that is before the court. In very simplified summary, in the hierarchy of laws the U.S. Constitution comes first, followed by federal statutes, then followed by federal rules and regulations. Below those are the state Constitution, then the state statutes, and then the state rules and regulations. Below those are local laws and ordinances. All laws must conform to, or be not inconsistent with, any applicable law that stands at a higher level in the hierarchy of laws. As examples, (1) all laws and government actions must conform

to, or be not inconsistent with, the U.S. Constitution, and (2) an ordinance passed by a city council must conform to, or be not inconsistent with, all higher levels of applicable law, both federal and state. Normally, only a few of these sources of law will apply to any specific case presented to a judge.

Sometimes none of these sources of law resolves the matter at issue in a case. In such a case the judge will resort to the “common law.”<sup>22</sup>

“Common law” refers to the body of previous judicial decisions (called precedents) and the method of reasoning used when applying such legal precedent in a particular case. When the body of precedent includes a decision of a higher court in a jurisdiction, a lower level court in that jurisdiction must follow the precedent in reaching its decision. Sometimes, however, a court is presented with an issue for which there is no authority by a higher court. In such a case, the lower level court must decide the issue based on the logical application of legal precedent to the greatest extent possible. The judge must avoid making arbitrary decisions.<sup>23</sup>

In some cases, the jury, rather than the judge, decides the facts of the case, based on

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<sup>22</sup> The tradition of common law dates back to 12th Century England. King Henry II, intending to accomplish legal reform, established central courts. Those courts and their offspring created a system of laws “common” to the whole of England, supplanting disparate provincial customs. [G. M. Trevelyan, *A Shortened History of England*, (Pelican Books 1959) (1942), 135.] England’s common law was carried to the United States during and after the colonial period. Today, federal courts and state courts (except for courts of the State of Louisiana, which follows the French Napoleonic Code) have each developed their own “common law” that judges in their respective courts are bound to follow when it applies.

<sup>23</sup> See <http://www.ojd.state.or.us/aboutus/courtsintro/index.htm> for further explanation of the common law.

the evidence presented, including witness testimony and exhibits. The judge gives instructions to the jury as to the legal standards it must apply to the facts it finds. In giving instructions, the judge directs the jury to follow the same hierarchy of laws and common-law precedent that the judge would be required to follow if the judge were deciding the matter.

Judges have considerable power to assure fair participation of parties in court proceedings, including the following: the power to enforce order in the proceedings, the power to compel the attendance of witnesses to testify, and the authority to administer oaths to witnesses.<sup>24</sup> These powers are enforceable through contempt proceedings, which may result in appropriate punishment for violators.<sup>25</sup>

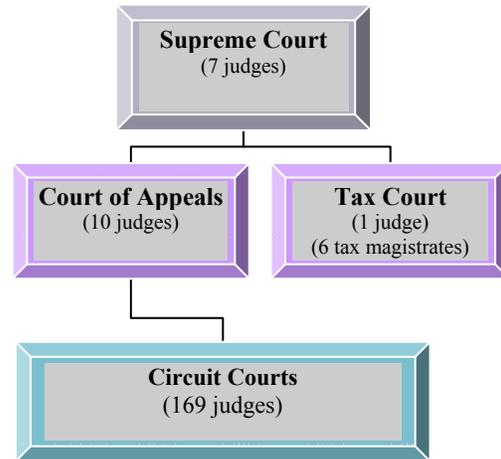
The core work of a judge is to identify the applicable law in the case before the court, to apply it to the facts of the case, and to make a decision based upon the law and the facts. In each case there will be a winner and a loser. The loser can appeal the case to a higher court or, perhaps, use the strength of public support to seek a legislative change in the law. (Normally a legislative change to the law will not affect the result in a case that has already been decided.)



<sup>24</sup> ORS 1.010.

<sup>25</sup> ORS 1.020.

## Structure of the Oregon Judicial Department



### Oregon Circuit Courts

The circuit court is a trial court of “general jurisdiction.” It hears all types of cases other than tax cases. The general jurisdiction of the circuit court includes both criminal and civil matters. Criminal cases involve felonies, misdemeanors, or violations of state and local laws by adults and juveniles. Civil cases include all matters that are not criminal cases. Examples of civil cases are small claims, family and contract disputes, personal injury cases, landlord-tenant disputes, and probate issues.

Circuit courts in some judicial districts have created specialty courts to deal with family matters, mental illness cases, and controlled-substance violations. “Drug courts” are an example of a specialty court. In an effort to achieve better outcomes for the individual defendants and the community, drug courts administer justice coupled with intensive, required treatment programs as an alternative to traditional sentencing. Drug courts are usually financed separately from the court system, through grant moneys, leaving

them with unstable and unpredictable funding.

Jury trials are held in the circuit courts. Because the right to a jury trial is secured in the Oregon Constitution, parties to a lawsuit will automatically have a jury trial unless all parties to the lawsuit waive that right in writing. (In federal court, on the other hand, a party to a lawsuit must specifically request a jury in order to have one.) In some cases, the law directs that a judge will decide the case without a jury.

Circuit courts are “courts of record.” With the exception of small claims and violations, the proceedings are recorded by an official court reporter or a special audio or video recording system. This record is used in any appeal of the circuit court’s decision to a higher court.

As of January 1, 2006, there are 169 circuit court judges. The judges are assigned to the 27 judicial districts that cover Oregon’s 36 counties. District No. 4 (Multnomah County) is largest, with 38 judge positions. Districts 8 (Baker) and 26 (Lake) are smallest, with one judge each. Some judicial districts cover more than one county. For example, District No. 7 includes the circuit courts of Hood River, Gilliam, Sherman, Wasco, and Wheeler Counties.

All circuit judges are elected by the voters within their judicial district. The Chief Justice of the Supreme Court appoints a presiding judge for each district, choosing from the circuit court judges elected in that district. Four new judicial positions were added in the 2005 legislative session. These judges, to be elected in the November 2006 election, will take office in January 2007 in Jackson, Clackamas, Umatilla/Morrow, and Clatsop County.

## **Oregon Tax Court**

The Tax Court has exclusive jurisdiction over all disputes involving the state’s tax

laws. A single Tax Court judge is elected statewide and presides over trials without a jury. Tax Court is a court of record and has the same powers as a circuit court.<sup>26</sup>

In 1997 the Legislature created the Magistrate Division of the Tax Court to replace Revenue Department hearing officers. Magistrates are lawyers and full-time employees of the Oregon Judicial Department appointed by the Tax Court judge, who supervises their work. Magistrates conduct hearings by telephone or in person. These hearings are more informal than a trial in the Tax Court. Decisions of the magistrates may be appealed to the Tax Court judge.

The courtroom of the Tax Court and the offices of the Tax Court judge and magistrates are located in Salem in a building across the street from the Supreme Court Building. The Tax Court judge conducts some trials in the Tax Court courtroom and also travels throughout the state to conduct trials where the parties to cases are located.

## **Oregon Court of Appeals**

The Court of Appeals hears all civil and criminal appeals that come to it, with a few exceptions. (Death penalty cases, Tax Court cases, and certain other special cases must go directly to the Supreme Court.) The Court of Appeals also hears appeals from administrative actions of state agencies.

Ten judges sit on the Oregon Court of Appeals. They are all elected statewide in staggered terms. The Chief Justice of the Supreme Court appoints the Chief Judge of the Court of Appeals.

The court’s caseload is very large, about 5,000 cases each year. Court of Appeals judges sit in panels of three to hear arguments and draft opinions in the cases that come before them. The Chief Judge assigns cases to each of the panels. The Chief Judge

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<sup>26</sup> ORS 305.405.

does not sit on any one panel but may substitute for panel members who are absent or have a conflict of interest. In each case, the panel reviews the trial record (that is, papers filed by the parties in the trial court, the court reporter's written transcript or the recording of the proceedings in the trial court, and the exhibits used at trial) and the parties' written arguments ("briefs"), and listens to oral arguments made by the parties' lawyers. The remaining judges who are not sitting on that panel and the court's staff attorneys and law clerks review and comment on the panel's draft opinion before it is published. Some cases are heard by the full court in a "full court conference."

The Court of Appeals has offices in Salem in the Justice Building and uses the same courtroom as does the Supreme Court.

### **Oregon Supreme Court**

Seven justices sit on the Oregon Supreme Court and are elected statewide in staggered terms. The justices elect one justice to serve as the Chief Justice. The Chief Justice is the chief executive officer of the Oregon Judicial Department.

The Supreme Court hears appeals and original actions that state statutes or the state Constitution require it to hear. The Supreme Court also hears original actions and appeals that it chooses to hear. The Supreme Court must hear direct appeals in death penalty cases and appeals by the state or local prosecutor from circuit court orders suppressing evidence in murder cases, as well as appeals from Tax Court decisions, attorney discipline and judge discipline cases, ballot measure titles, prison-siting disputes, and orders of the Energy Facility Siting Council. All seven justices hear oral arguments in the cases that come before the court.

The Supreme Court has offices and a courtroom in the Supreme Court Building in Salem, the only court facility owned by the state.

## **Funding of the Oregon Judicial Department**

The Chief Justice of the Oregon Supreme Court, in his role as chief executive of the Oregon Judicial Department, submits his biennial budget proposal for the Department to the Governor's office. The Governor publishes the document in December of the year before the start of the next legislative session.<sup>27</sup> The Governor has no authority to revise the Judicial Department's budget although he may subject the department to the same rate of reduction that may be required of all state agencies in an across-the-board fashion.<sup>28</sup>

In the Legislature, the Public Safety Subcommittee of the Joint Ways and Means Committee considers the budget of the Oregon Judicial Department with the budgets of many other departments and commissions, most of which perform functions relating to Oregon's criminal laws.<sup>29</sup> The Joint Ways and Means Committee then considers these budgets along with the proposed budgets of other state agencies in developing a balanced state budget.

In 2003 during a recession, the Oregon Judicial Department experienced a record decrease in funding after the end of the fifth

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<sup>27</sup> The Oregon Legislature meets between January and July in odd-numbered years. One of its major roles is to pass the budget for all state services for the upcoming biennium, which begins on July 1.

<sup>28</sup> Governor's 2005-2007 Budget, See <http://egov.oregon.gov/DAS/BAM/docs/Publications/GRB0507/K-JudBranch.pdf>, p.K-2; Or. Const., Article III, Section 1, Separation of Powers.

<sup>29</sup> Department of Justice, District Attorneys, Public Defense Services Commission, Oregon State Police, Military Department, Department of Public Safety Standards and Training, Department of Corrections, Oregon Youth Authority, Oregon Criminal Justice Commission, and other boards and commissions.

special session of the Legislature and the defeat of Ballot Measure 28 (which would have raised taxes). Those cuts resulted in staff reductions (down to 1,766 full-time-equivalent positions<sup>30</sup>), staff salary reductions of 10% as staff worked nine-hour days four days a week, and closure of all courts one day each week for several months. Assessing the impact of the severe budget cuts, then Chief Justice Wallace P. Carson, Jr. said “We are essentially dismantling Oregon’s 143-year old court system.”<sup>31</sup>

Following the 2005 legislative session, the State Court Administrator’s office reported that the staffing level of the Judicial Department for the 2005-07 biennium was projected to be 1,851.25 full-time equivalent positions. To meet the Department’s needs for the biennium, the Legislature allocated \$271,530,503<sup>32</sup> in General Fund revenue, plus an assortment of federal grants<sup>33</sup> and court-improvement-project moneys, for a grand total of \$304,782,163. The Legislature also awarded \$175,807,772 to the Public Defense Services Commission<sup>34</sup> for providing attorneys to represent indigent criminal defendants during the biennium.

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<sup>30</sup> That figure included judges, court administrators, court reporters, interpreters, secretaries, accountants, librarians, and other employees in all state courts.

<sup>31</sup> “At the Crossroads, A Dialogue with Wallace P. Carson, Jr.”, *Oregon State Bar Bulletin*, (January 2003), 15.

<sup>32</sup> That figure covers salaries and benefits for all employees plus furnishings and equipment as needed.

<sup>33</sup> Nearly one million dollars in federal methamphetamine grant moneys are included. Those dollars are being used to fund the drug courts in Benton, Marion, Malheur and Multnomah Counties. Those grant moneys will expire in 2007.

<sup>34</sup> The Public Defense Services Commission assumed the indigent defense administration in 2003. Prior to 2003, the indigent defense costs were included in the Judicial Department’s budgets.

The criminal justice system depends on many state, county, and local agencies to assist the courts in their mission. Among these are state police (including its forensic services), county sheriffs, and city police; county district attorneys; prisons, jails, and youth correctional facilities; parole and probation; the state mental hospital; residential treatment programs for people with drug or alcohol problems; and caseworkers in child welfare and foster-care cases.

## ***Judicial Selection in Oregon***

In Oregon, voters elect judges to the state courts (Supreme Court, Court of Appeals, circuit courts, and Tax Court,) in nonpartisan elections for six-year terms.

Judges must be United States citizens, residents of Oregon for at least three years, and admitted to practice law in the state of Oregon. The Governor may appoint a qualified person to fill mid-term vacancies until the next election.

When a vacancy occurs, the Governor accepts “Interest Forms” from anyone qualified for appointment to fill the vacancy. (For appointments to the Supreme Court and Court of Appeals, the Oregon State Bar evaluates the candidates and recommends a short list to the Governor who considers, but is not bound by, the Bar’s recommendations.) The Governor may create a screening committee that includes members of the Governor’s staff and members of the public. The Governor may personally interview one or more candidates and accept input from the public. An appointee’s term of office expires when a successor has been elected and qualified. An appointee who wishes to remain a judge must be elected to a full term in the next general election after the appointment (except if the appointment was made less than 62 days before the general

## Qualifications of Judicial Candidates

Court	Qualifications
<b>Supreme Court</b> <sup>35</sup>	<ul style="list-style-type: none"> <li>• United States citizen</li> <li>• Resident of the state for three years prior to election or appointment</li> <li>• Admitted to practice in the Supreme Court.</li> </ul>
<b>Court of Appeals</b> <sup>36</sup>	<ul style="list-style-type: none"> <li>• United States citizen</li> <li>• Elector of the county of the residence of the judge</li> <li>• Admitted to the practice of law in this state</li> </ul>
<b>Circuit Courts</b> <sup>37</sup>	<ul style="list-style-type: none"> <li>• United States citizen</li> <li>• Admitted to the practice of law in this state.</li> <li>• Resident of the state for 3 years and of the district for at least 1 year.</li> <li>• Resident of or principal office in judicial district for which elected or appointed. (For districts with populations of 500,000 or above, may reside within 10 miles of the boundary of the district)</li> </ul>

election.)<sup>38</sup> In practice, many judges receive their initial position by appointment.

On occasion a sitting judge may not be able to perform judicial duties because of illness or a conflict of interest with one of the parties in the lawsuit. In such cases, the Supreme Court may select any elected judge or qualified person to serve as a judge pro tempore to fill the temporary vacancy.<sup>39</sup> In some circuit courts, pro tempore judges are also appointed on a part-time or full-time basis to serve in specific assignments, such as handling probate or criminal matters.

### **Removal from Judicial Office**

In Oregon, a state judge may be removed from office in either of two ways. The voters of the district from which the judge was elected may recall the judge, just as any other public official may be recalled, for any reason.<sup>40</sup> A judge also may be removed by the Supreme Court for any of the following

reasons: conviction of a felony or crime involving moral turpitude; willful misconduct in judicial office; willful or persistent failure to perform judicial duties; generally incompetent performance of judicial duties; willful violation of any rule of judicial conduct established by the Supreme Court<sup>41</sup>; habitual drunkenness or illegal use of narcotics or dangerous drugs.<sup>42</sup> In the case of removal by the Supreme Court, a full investigation is undertaken by the Commission on Judicial Fitness and Disability before the Supreme Court makes its decision on the appropriate manner of dealing with the judge's particular problem.<sup>43</sup> Temporary suspension or censure of the judge may be considered an appropriate remedy under the proven circumstances.



<sup>35</sup> ORS 2.020.

<sup>36</sup> ORS 2.540.

<sup>37</sup> ORS 3.041 and 3.050.

<sup>38</sup> Or. Const., Article V, Section 16.

<sup>39</sup> ORS 1.635.

<sup>40</sup> Or. Const., Article II, Section 18.

<sup>41</sup> Those rules include the following: maintaining the integrity of the judicial system; performing judicial duties in an impartial and diligent manner; minimizing the risk of conflict between judicial and extra-judicial activities; and refraining from political activity.

The full content of the rules is available at [www.osbar.org/rulesregs/cjc.html](http://www.osbar.org/rulesregs/cjc.html).

<sup>42</sup> Or. Const., Article VII (Amended), Section 8.

<sup>43</sup> ORS 1.410 et seq.

## ***Decision-Making Bodies Outside the Oregon Judicial Department***

### **Locally-Funded Courts**

Oregon has three types of locally funded courts that are not part of the Oregon Judicial Department: county courts, justice courts, and municipal (city) courts. Those courts are not courts “of record,” meaning there is no court reporter or recording device to record witness testimony.

Seven eastern Oregon counties have boards of county commissioners called “county courts.” Each has a county “judge” who chairs the county commission and performs limited judicial functions.<sup>44</sup> Some handle probate matters; others handle juvenile cases; some handle both. County “judges” do not need to be lawyers.

Some counties have “justice courts” for cases involving alleged misdemeanors and violations. A justice of the peace may also conduct weddings and need not be a lawyer.

Municipal courts have jurisdiction over violations of the city’s municipal ordinances within the city limits or on city-owned or controlled property. Such ordinances govern things such as animal control, traffic, and parking.

### **Administrative Boards and Hearings Officers**

Oregon has a number of administrative boards and agencies that conduct hearings in contested cases. Examples include the Oregon Land Use Board of Appeals, which hears appeals from city and county land-use decisions; the Workers Compensation

Board, which decides issues involving medical treatment and extent of disability for workers who are injured on the job; and the Employment Relations Board, which decides questions involving collective bargaining rights and alleged unfair labor practices for public-sector employees. In some cases a board acts as a quasi-judicial body, making decisions about the parties’ rights and obligations. In other cases, the agency retains an impartial hearings officer to conduct a hearing and make a decision or a recommendation. Decisions of administrative boards and agencies may be appealed to the Court of Appeals.

### **Tribal Courts**

Some Native American tribes in Oregon have tribal courts funded by the tribe. Where the courts exist, they are separate and distinct from state and federal courts. They interpret tribal law and have jurisdiction over civil and criminal matters that arise on reservation lands and properties. They can intercede in child welfare cases involving Indian children.

## ***Federal Courts Distinguished from State Courts***

The system of federal courts, financed by the federal government, is separate and distinct from the state court system that exists in Oregon and every other state.

In federal court, the trial court is known as the “district court”; the court of appeals is known as the “Circuit Court of Appeals”; and the United States Supreme Court is the highest court. Federal Bankruptcy Court is a specialized jurisdiction court that hears only bankruptcy cases. Other specialized jurisdiction federal courts include the Tax Court and the Court of Claims. There are district courts throughout the United States, and

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<sup>44</sup> County courts were authorized in the 1859 Constitution, for specific purposes. Or. Const., Article VII (Original), Sections 12 and 13.

each has its own name, e.g., the United States District Court for the District of Oregon. There are various circuit courts of appeals. Oregon is within the geographical jurisdiction of the United States Court of Appeals for the Ninth Circuit.

State courts are courts of “general jurisdiction”: they may hear nearly any case that comes before them. Federal courts are courts of “limited jurisdiction”: they do not hear all types of cases, but only those described in Article III of the U.S. Constitution (such as violations of federal law and disputes between states or between citizens of different states). Federal law provides that some cases (patent cases, for example), can only be heard in federal court.

## ***Alternative Methods of Resolving Disputes***

### **Arbitration**

Arbitration is an out-of-court process by which a lawyer or other professional is appointed to conduct a hearing and make a decision in a matter that would otherwise be heard by a judge. Under Oregon law, civil cases where the amount in controversy is less than \$50,000 (\$25,000 in some circuit courts) and domestic relations cases in which the only issue is property division are referred to mandatory non-binding arbitration. These cases may be appealed to the circuit court.<sup>45</sup>

Arbitration is often specified in commercial and employment-related contracts as the method by which disputes that may arise over the contract’s interpretation or implementation will be resolved. The decisions that arbitrators issue in contractual cases are usually final and binding, which means that

they may not be appealed to the court system.

### **Mediation**

Mediation differs from arbitration. Mediation assists disputing parties to communicate about their dispute and to seek options for settlement. Mediation is encouraged by Oregon law as a way of solving civil litigation disputes.<sup>46</sup> The state maintains a list of qualified mediators to assist in public-policy and agency-related conflicts. Mediation can be helpful in divorce cases, conservatorship conflicts, disability-related issues, and construction conflicts. Mediators are usually paid by the parties themselves.



## ***Looking Ahead***

In next year’s publication, the study committee will summarize the results of interviews with people who provide judicial services, represent parties in court, are employed by the Oregon Judicial Department, have used the courts, or otherwise interact with the Oregon judicial branch. It is anticipated that, as a result of that summary and a review of other materials that will be gathered, the League of Women Voters of Oregon will be able to reach consensus on a new position regarding the judicial branch of our state government.

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<sup>45</sup> ORS 36.405.

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<sup>46</sup> ORS 36.105.

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