

IN THE JUSTICE COURT OF THE STATE OF OREGON
FOR TILLAMOOK COUNTY

In the matter of adopting policies and)
procedures for the general operation of)
the court and expressing the processes of) General Order 2009-1
the court in writing so as to provide the)
public with an understanding of court)
procedures and policies.)

1. **Authority** for Adopting General Orders is found in Oregon Revised Statutes chapter 1, particularly ORS 1.230, 1.240, 1.250, 1.260, 1.270, as well as the statutes referring to Justice Courts generally in ORS chapters 51, 52, 53, 54, and 55. The Oregon Constitution of 1859 Article VII (Amended) and Article VII also provide a legal basis for this court’s authority.
2. **Rules of Civil Procedure.** The Court adopts the Oregon Rules of Civil Procedure as procedural rules in the court. The rules apply to all parties in eviction proceedings, and, unless contradicted by specific statutes, in small claims cases.
3. **Oregon Evidence Code.** The Oregon Evidence Code applies in all traffic cases, other violation cases, and eviction cases.
4. **Uniform Bail Schedule.** The Oregon Uniform Bail Schedule, as adopted and amended by the Oregon Supreme Court, is adopted as the bail schedule for this court. This adoption included the minimum and maximum fine and assessment schedules. This court may supplement that bail schedule, as needed, for county ordinances, city ordinances, and other matters not otherwise listed in the uniform bail schedule.
5. **Violations Bureau.**
 - a. This court has a violations bureau, pursuant to ORS 153.800. All staff members of the court are appointed as violations clerks. The authority of the violations clerks shall be broadly construed.
 - b. Violations clerks may accept guilty and no contest pleas and bail forfeitures.
 - c. If a defendant has no traffic or other violation convictions within three years of the date the current ticket was issued, the clerk may impose the minimum fine. The clerk may also impose the base fine or the maximum fine, in the discretion of the clerk.
 - d. A clerk may dismiss a ticket for the following violations if, in the clerk’s discretion, there is proof that the issue has been resolved, fixed, repaired or otherwise remedied prior to arraignment:
 - i. No proof of insurance

- ii. Failure to carry insurance
 - iii. No operator's license
 - iv. Driving While Suspended
 - v. No front plate
 - vi. Expired tags
 - vii. Driving with burned out lights. This includes situations where fuses and wiring issues have caused the problem
 - viii. Inadequate mud flaps and fender flares
 - ix. Absent mirrors, windshields.
 - x. Fail to signal, when the problem was due to electrical or mechanical failure
 - xi. No brake lights
 - xii. Fail to register vehicle
 - xiii. Inadequately maintained seatbelt
- e. Other arguably "fix it" violations are generally not dismissable, unless approved by the judge. This includes not having applicable permits, fish and game licenses, overweight permits, and parking permits.

6. Failure to Appear and Failure to Comply

- a. A party in any case is considered to fail to appear when the person
 - i. Appears in a traffic matter later than 10:30 a.m. on the arraignment date set forth on the ticket, or as otherwise previously rescheduled by the court for a new date.
 - ii. Appears more than 10 minutes late for any hearing scheduled for an eviction case or small claim case
 - iii. Appears more than 10 minutes late for any trial or other hearing on a traffic violation or other violation.
- b. Not less than five judicial days following a scheduled arraignment on a traffic or other violation where the defendant has failed to appear, the court may
 - i. Issue a driver's license suspension order to the Oregon Motor Vehicles Division, and impose a \$50 suspension fee as part of the judgment of conviction in the case.
 - ii. Assign the account to a collection agency
 - iii. Forward the abstract of conviction to the appropriate agency (DMV, OSP, Marine Board, ODOT weighmasters, OLCC, etc)
- c. A defendant is considered to be in default on their payment plan with the court whenever a scheduled payment is more than 10 days overdue. The court may issue a driver's license suspension order to DMV, and/or assign the account to a collection agency.
- d. Once a suspension order has been issued, the court will not rescind that order or otherwise ask the DMV to reinstate a defendant's driving privileges until the entirety (**all**) of the imposed fine, including the suspension fee, has been fully paid. The judge retains the discretion to deviate from this policy depending upon the equities of the particular situation.

- e. The court will not accept payments from defendants on accounts which have been assigned to a collection agency. If such funds are mailed to the court, the court will endorse the check or money order over to the collection agency and mail the check to the collection agency. The court has no responsibility for any late fees or other penalties the collection agency may impose upon the defendant by virtue of making payment in that fashion.

7. Payment Plans and Form of Payment

- a. Upon the entry of a judgment of conviction in a violation, a defendant may enter into a payment contract with the court. There is a \$10 administrative fee for the making of this contract, to recoup the court's administrative time in processing the contract, posting multiple payments on an account, and reviewing the account for compliance with the contract.
- b. The court does not send out billings on a payment contract or plan.
- c. The defendant is obligated to advise the court of the defendant's current mailing address and to contact the court if payments are not going to be made and seeks forbearance on the payment plan.
- d. Failure to comply with the payment plan and contract will result in the court imposing a driver's license suspension order (with the imposition of the \$50 suspension fee) and assigning the account to a collection agency.
- e. The court may not accept forms of payment in the nature of coins, checks, electronic means, or currency, when the acceptance of that tender is contrary to the guidelines of the county treasurer, a bank, or the Comptroller of the Currency, or is otherwise outside the scope of sound financial practices. The determination of the clerk or the judge shall be final.

8. Small Claims and Mediation

- a. **Default Judgments.** Pursuant to statute, a default judgment can be entered more than 14 days after a defendant has been served in the manner provided by law, and after the plaintiff submits proof of service and the applicable affidavit for a default judgment. The clerk will mail a copy of the signed judgment to both parties. Plaintiffs must comply with the applicable state and federal laws regarding service of process upon the defendant and in seeking a default.
- b. **Contested cases.** A small claims case is considered to be a contested case when the defendant files an answer, counterclaim, or motion with the court and pays the appropriate filing fee.
- c. **Motions.** The court will adjudicate written motions without a hearing, unless a party requests a hearing in writing at the time the motion or the response to the motion is filed with the court. The person filing the motion must provide proof in writing to the court that the other party was mailed a copy of the motion. The court will provide the other party time to respond to the motion before ruling on the motion, unless the motion is for a continuance of a trial and trial is imminent.

- d. **Ex parte contact.** The court will not consider documents from a party unless there is written proof that the party has mailed or otherwise provided copies of the documents to the other party. Ex parte motions should be considered to be denied by the court immediately.
- e. The **procedural handout** the court provides to the public in the hallway of the courthouse and on the court's website is incorporated in these policies and procedures by this reference. Parties are expected to read and to comply with that information.
- f. The court and court staff cannot and will not provide **legal advice** or counsel to any party or witness.
- g. **Mediation.** All contested small claims cases are subject to mediation. The court clerk will provide the parties with a trial date notice. At the time of trial, the parties will meet with the judge and be introduced to a mediator. Parties are expected to meet with the mediator and engage in the mediation process in good faith. When a trial is necessary, the court will generally conduct the trial at that time. Information obtained during the mediation process is NOT admissible at trial and mediators are barred from being called as witnesses at trial.
- h. **Pre trial discovery.** The trial date notice instructs the parties to provide the other party with a copy of all written materials regarding the case within ten days of the date of the trial notice. This exchange of information is useful in the mediation process and in preparing for trial. Failure to comply with the discovery process and exchange of information is viewed by the court with disfavor and may result in sanctions, including not being able to offer certain evidence, to call a witness, or dismissal of the party's claim or counterclaim, as well as an award of costs or other monetary obligation.
- i. **Evidence submitted to the court.** The court may accept certain evidence at trial, to assist the court in reaching a verdict. Parties are urged to review the Oregon uniform trial court rules on issues of bringing unacceptable items of evidence (hazardous substances, weapons, etc). The court has discretion to refuse such items. It is a criminal offense to bring firearms to the courthouse.
- j. **Prevailing Party Fees.** Pursuant to ORS 20.190 and the general order of this court entered February 27, 2009, the following schedule applies for prevailing party fees:
 - i. **Claims less than \$1000.**
 - 1. default judgments \$30
 - 2. Trial \$42.50
 - ii. **Claims from \$1000 to \$7500.**
 - 1. default judgments \$85
 - 2. Trial \$100
- k. **Appeals.** A party desiring to appeal a small claims judgment of the court has the burden of providing the court with an appropriate notice of appeal and appeal bond (surety), as well as the appropriate fees for the Justice Court and the Circuit Court. A party seeking an appeal must also provide

proof of mailing a copy of the notice of appeal and other relevant documents to the other party. The appealing party has the responsibility for ensuring the accuracy and completeness of any documents filed for an appeal. The court and staff cannot and will not provide a party with legal advice or counsel.

l. Writs of Garnishment.

- i.** The judgment creditor seeking a writ of garnishment has the obligation of submitting a completed form for a writ of garnishment, and paying the appropriate fees. The court will not insert additional information to complete the form. A defective writ of garnishment may expose the judgment creditor to additional civil liability. Incomplete or inaccurate forms may be rejected by the clerk.

9. Trial Procedures.

- a.** At trial, the party making the claim has the burden of proof and goes first with their evidence. The burden of proof is a preponderance of evidence (more likely than not), unless otherwise provided by law. That party may call witnesses and offer documents and other things as evidence. The other party has the right to question and cross examine the first party's witnesses.
- b.** The other party (defendant/respondent) may also offer evidence in the form of witnesses and documents or other things.
- c.** After the responding party has presented its witnesses and/or other evidence, then the first party can offer rebuttal witnesses and other evidence.
- d.** After these stages of the trial, the judge will make a decision, and no party can offer evidence or argument to the court while the judge is making a decision.
- e.** The court reserves its right to maintain a safe and orderly environment for the conduct of the trial. Persons in the courtroom are expected to be polite, to only speak when it is their turn, and to not disrupt the proceedings. Persons talking out of turn, being rude or disruptive may be asked to leave or may be found in contempt of court and lodged in the county jail to serve a jail sentence for contempt of court, as well as pay a fine. Electronic devices need to be silenced during court, or they may be confiscated by the court.
- f.** If the judge decides to take the case under advisement and not make a decision immediately at the end of trial, no party shall contact the court with any evidence or argument. Court staff do not comment on the judge's letter opinions and cannot give a party legal advice.

10. Security

- a.** The security plan of the court is the security plan as amended of the Twenty Seventh Judicial District of the State of Oregon.

- b. The court reserves its authority to preserve, protect, and defend the safety of all persons coming before the court and other offices within the courthouse. All persons coming to the court are subject to search for weapons or other threats to security.

11. Records

- a. The court maintains records and will retain records in accordance with the administrative rules of the State Archivist.
- b. Public records of the court may be inspected in a reasonable manner and time. Extensive record searches and copy requests are subject to the county's public records policies.
- c. Public records requests will be addressed in a timely fashion, but other duties of the clerks may necessitate a delay in providing the information.
- d. The court may confer with county counsel regarding compliance with records requests.

12. Justice Court sitting as a municipal court

- a. The court is the ex officio municipal court for the City of Bay City and the City of Garibaldi.
- b. In that capacity, the court has the powers and authority of a justice court and a municipal court.

13. Ex parte communication

- a. The court will not consider documents from a party unless there is written proof that the party has mailed or otherwise provided copies of the documents to the other party. Ex parte motions should be considered to be denied by the court immediately.
- b. The court staff and the judge cannot discuss any aspect of a factual nature of a pending case with any person or party, unless the other party to the case is present. The court has very limited ability to discuss procedural aspects of a pending case with any person, and an interested person is referred to these rules, the uniform trial court rules, the rules of civil procedure and other aspects of law to address questions.

14. Emergency Plans and Contingencies

- a. In the event of an emergency, the court will follow the court security plan of the Twenty Seventh Judicial District and other county policies
- b. The court may conduct its business in any form or method, including the use of electronic communication, the holding of court in various locations and in accessing needed information by any means.
- c. A state of emergency will be considered to exist when that determination is made by the President of the United States, the Governor of Oregon, the Chief Justice of the Oregon Supreme Court, the presiding judge of the Twenty Seventh Judicial District, the Board of County Commissioners, the Sheriff, the Mayor of the City of Tillamook, the Chief of Police of the City

of Tillamook, the Tillamook Fire Chief, a judge of this court, or when circumstances are obvious.

- d. During an emergency, staff may deviate from normal procedures and practices in order to expedite the administration of justice and to serve the public.

15. Weddings

- a. Weddings may be scheduled by the clerks. Parties will need to submit a \$50 scheduling deposit with the court, refundable at the time of the wedding if the wedding occurs. This requirement is needed, due to the inordinant number of no shows for wedding times when such a deposit was not required.

Dated at Tillamook, Oregon September 8, 2009.

____s/Neal C. Lemery____
Neal C. Lemery
Justice of the Peace