These Underutilized Resources Alleviate Backlogs, Increase Access to Justice

The Role of Justice Courts

By Justin Kidd

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Every lawyer knows the circuit court, but many overlook the state's other court system — justice courts. Bar members should get to know this underused resource, since justice courts resolve cases quickly, economically and in a way that broadens access to justice.

Justice courts are state courts, and the justice of the peace (the judge in a justice court, which is my role for Marion County) is a state court judge. *Kuhnhausen v. Staadelman,* 174 OR 290, 305 (1944). So, like district attorneys, justices of the peace are state court officers, even though we are paid by the counties.

Justice courts have been here for a long time. They were a part of the Oregon judicial system even before Oregon became a U.S. territory. Both British and American-associated governments established justice courts in the pre-territorial days. (Champoeg Charter of 1843, Sec. II, Art 7 (act of American-associated missionaries); Act of Parliament July 2, 1821 (1 and 2 George IV, Ch. 66) (British version)). And, like the circuit court, justice court derives its authority from Article VII, Section 2, of the Oregon Constitution. *Webster v. Boyer,* 81 OR 485 (1916). In addition, justice courts derive their statutory authority from ORS Chapters 51-55.

In the early days of statehood, many counties did not have a resident circuit court judge. Rather, those judges "rode the circuit" from county seat to county seat. When the circuit court judge was away, in many counties, the justice of the peace conducted arraignments and preliminary hearings.

What Do Justice Courts Do?

Today, justice courts hear a high volume of small cases. For those of you with older bar numbers, think of justice courts as rural district courts. We have statutory authority to hear misdemeanor cases, violations, landlord-tenant cases and civil disputes of $10,000 or less. The court can hear civil cases either as small claims or in the regular civil division as an ORS 20.080 claim. Justice courts can empanel juries, but most matters are tried to the bench. No justice court is currently a court of record, so the circuit court hears appeals of our judgment under a de novo review standard. And of course, we marry people!

Because justice courts and circuit courts have overlapping jurisdiction, the courts should collaborate to facilitate speedy administration of justice. For example, in Marion County, Presiding Judge Tracy Prall and I have worked together to move certain eviction cases and Oregon State Police traffic cases from circuit court to justice court. In total, we've moved about 3,800 cases per year, easing the burden on the circuit court, and allowing that court to focus on more pressing matters. Similar partnerships could better facilitate justice in their counties.

In addition to facilitating the work of the circuit court, justice courts also benefit the community in numerous ways. Whereas a civil case in circuit court may take quite some time to conclude, especially with the COVID backlog, justice court can resolve civil cases in 45-60 days. And, the statutory filing fee for a justice court small claim is just $37 (ORS 51.310(1)(c)), whereas the fee in circuit court is $57 or $102, depending on the amount in controversy. ORS 46.570.

Most importantly, justice courts broaden access to justice through our geographic reach, our ease of navigation, and our ability — as specialized courts — to better tailor remedies to defendants' circumstances.

Geography. Rural Oregonians' lack of court access is well documented. Many justice courts ease that burden by providing access to justice in places far from the county seat. For example, justice courts in Reedsport and Florence spare coastal residents the burden of driving to Roseburg or Eugene to handle minor legal matters. Similarly, justice courts in Lebanon and Ontario provide localized and convenient judicial access without requiring residents to trek to Albany or Vale.

Ease of navigation. Most cases in justice courts are pro-se or half-se, so our court is designed to serve laypeople. Even our physical footprint is designed to make laypeople feel comfortable. In Marion County and Clackamas County, justice courts are located in strip malls with ample parking and also adjacent to transit. These locations lack the "glamour" of marble courthouses downtown, but that's the point. Not everyone has always felt comfortable navigating the fancy temples of justice ... but most people feel comfortable navigating a strip mall with ample parking.

As specialists in pro-se and half-se cases, justice courts have designed their internal processes to be accessible to lay-

people. Plain language is used rather than legal jargon. The staff bend over backward to explain procedural requirements to the court's customers. And, by not being a court of record, here in Marion County we are able to arraign people in Spanish and hold small claims trials entirely in Spanish as appropriate.

Tailor sentencing. Due to our size, justice courts have more flexibility to tailor unique sentences for certain traffic matters. In Marion County, our small size and our focus on traffic allow us to run a community service program with a broad definition of "community service." When people are DHS-involved, we can credit their parenting classes as community service hours. When people are getting ready to be released from incarceration, we can count their transition-planning activities as a kind of community service. And when people are getting sober or are getting mental health treatment, we are able to count those activities as service. I'm able to do this kind of thing even when convictions are years old — often the case where there are incarceration, mental health or substance abuse issues — because of my court's size and the specialized kind of court we run.

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Despite these advantages, the justice courts are underused — and in some places — inadequately funded — resources. They work well for ORS 20.080 cases, FED cases and similar matters, yet some counties lack justice courts, which could ease the burden on the circuit courts and increase access to justice for everyone. ■

Justin Kidd is the justice of the peace for Marion County. He encourages anyone interested in justice courts to stop by for a tour and a talk.