

# Additional Civil Appeals: Oregon

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*A Q&A guide to appealing from an intermediate appellate court to the court of last resort in Oregon. This Q&A addresses starting an appeal (as of right or by permission), obtaining a stay pending appeal, completing preliminary requirements (like mediation), submitting a factual record or appendix, briefing the appeal, and arguing the appeal. Answers to questions can be compared across a number of jurisdictions (see [Additional Civil Appeals: State Q&A Tool](#)).*

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## Starting an Appeal

## Stays Pending Appeal

## Preliminary Matters

## Court Submissions

## Oral Arguments

1. What types of rulings, if any, can a party appeal as of right?

In civil cases, there are no appeals as of right to the Oregon Supreme Court from a decision of the Oregon Court of Appeals (Or. R. App. P. 9.07).

2. What types of rulings can a party appeal by permission (for example, anything not appealable as of right, final judgments)?

A party can petition the Oregon Supreme Court for discretionary review of any decision of the Oregon Court of Appeals, including any:

- Opinion.
- Per curiam opinion.
- Affirmance without opinion.
- Order ruling on a motion, own motion matter, petition for attorneys' fees, or statement of costs and disbursements.

(Or. R. App. P. 9.05(1).)

In deciding whether to review a case, the Supreme Court considers the following factors, which are neither exclusive nor binding:

- Whether the case presents a significant issue of law. Significant issues include:
  - interpretation of a constitutional provision;
  - interpretation of a statute;
  - constitutionality of a statute;
  - legality of an important government action;
  - use or effect of a trial court procedural rule; or
  - application or proposed modification of a common law principle.
- Whether the issue or a similar issue arises often.
- Whether many people are affected by the decision in the case, or the consequence of the decision is important to the public, even if the issue may not arise often.
- Whether the legal issue is an issue of state law.
- Whether the issue is one of first impression for the Supreme Court.
- Whether the same or a related issue is pending before the Supreme Court.
- Whether the legal issue is properly preserved, and whether the case is free from factual disputes or procedural obstacles that might prevent the Supreme Court from reaching the legal issue.
- Whether the record does, in fact, present the desired issue.
- Whether present case law is inconsistent.

- Whether it appears that trial courts or administrative agencies are inconsistent or confused in ruling on the issue that the case presents.
- Whether the Court of Appeals published a written opinion.
- Whether the Court of Appeals was divided on the case.
- Whether the Court of Appeals decided the case *en banc*.
- Whether the Court of Appeals decision appears to be wrong, and if so:
  - whether the error results in a serious or irreversible injustice or in a distortion or misapplication of a legal principle; and
  - whether the error can be corrected by another branch of government, such as by legislation or rulemaking.
- Whether the issues are well presented in the briefs.
- Whether an **amicus curiae** has appeared or is available to advise the court.

(Or. R. App. P. 9.07.)

The Court of Appeals also may certify a case to the Supreme Court before reaching a decision of its own. The Supreme Court may choose whether or not to accept the appeal. (Or. Rev. Stat. § 19.405; Or. R. App. P. 10.10.)

3. Are there any restrictions on the types of issues the court of last resort can consider (for example, only constitutional questions, only questions of law)?

In an action at law, the Oregon Supreme Court cannot disturb the findings of fact unless there is no evidence to support the verdict (Or. Const. Art. VII (Amended), § 3; Or. Rev. Stat. § 19.415(1)).

When the Court of Appeals has tried a cause anew on the record or has made one or more factual findings anew on the record, the Supreme Court may limit its review of the decision of the Court of Appeals to questions of law (Or. Rev. Stat. § 19.415(4)).

4. Can the court of last resort consider the entire case (subject to any restrictions in [Question 3](#)) or is it limited to particular matters (for example, questions on which certiorari was granted)?

If the Oregon Supreme Court allows a petition for review, the court may:

- Limit its review to certain issues.
- Review all questions properly before the Court of Appeals that the petition or the response claims were erroneously decided by that court.
- Consider other issues that were before the Court of Appeals.

([Or. R. App. P. 9.20\(2\)](#).)

## Starting an Appeal

5. When must a party start an appeal?

A party must file a petition for review within 35 days of the Oregon Court of Appeals' decision ([Or. Rev. Stat. § 2.520](#); [Or. R. App. P. 9.05\(2\)\(a\)](#)).

A party must file a petition for review of a summary determination of appealability, however, within 14 days after the Court of Appeals' decision ([Or. Rev. Stat. § 19.235\(3\)](#); [Or. R. App. P. 2.35\(4\)](#)).

When a party files a timely petition for reconsideration of a Court of Appeals' decision, the time for filing the petition for review by the Supreme Court does not begin to run until the Court of Appeals disposes of the petition for reconsideration ([Or. R. App. P. 9.05\(2\)\(b\)\(i\)](#)).

6. How, if at all, can a party extend the time to start an appeal?

A party can seek an extension of time to file a petition for review by filing a motion with the Oregon Supreme Court ([Or. R. App. P. 7.25](#) and [9.05\(2\)\(a\)](#); [Or. Rev. Stat. § 2.520](#)).

7. How does a party start an appeal as of right (for example, notice of appeal, petition)?

In civil cases, there are no appeals as of right to the Oregon Supreme Court from a decision of the Court of Appeals ([Or. R. App. P. 9.07](#)).

8. How does a party start an appeal by permission (for example, motion to the court of last resort, motion to the intermediate appellate court)?

To obtain review of a decision of the Court of Appeals, a party must file a petition with the Oregon Supreme Court. The petition for review must be in the form of a brief. ([Or. R. App. P. 9.05\(2\)](#), [\(3\)\(a\)](#).)

The cover of the petition must identify:

- The petitioners.
- The respondents on review.
- The date of the Court of Appeals' decision.
- The means of disposition of the case by the Court of Appeals.
- The members of the Court of Appeals who decided the case, including, if applicable, the author of any opinion and the other members of the court who concurred in or dissented from the decision.

([Or. R. App. P. 9.05\(3\)\(a\)](#).)

The cover also must contain a notice stating whether, if review is allowed, the petitioner intends to file a brief on the merits or rely on the petition and the briefing in the Court of Appeals ([Or. R. App. P. 9.05\(3\)\(a\)\(v\)](#)).

The petition must contain the following sections in the following order:

- A short statement of the historical and procedural facts relevant to the review without restating facts correctly stated in the Court of Appeals' decision.
- Concise statements of the legal question or questions presented on review and of the rule of law that the petitioner proposes to be established if review is allowed.
- A statement of specific reasons why the legal questions presented on review have importance beyond the particular case and require decision by the Oregon Supreme Court.
- A brief argument concerning the legal questions presented on review, if desired and space permitting.
- A copy of the Court of Appeals' decision, including any opinion and concurring or dissenting opinions.

(Or. R. App. P. 9.05(4).)

## Stays Pending Appeal

9. How, if at all, can a party stay the lower courts' rulings pending appeal (for example, posting a bond, making a motion, automatically by appealing)?

Rulings previously stayed on appeal remain stayed during proceedings in the Oregon Supreme Court and until the appellate judgment is issued (Or. R. App. P. 14.05; see [State Q&A, Initial Civil Appeals: Oregon: Question 8](#)).

## Preliminary Matters

10. What, if any, preliminary matters are required before the parties brief the appeal (for example, filing informational forms, participating in mediation or settlement conferences)?

There are no preliminary matters required before the parties brief an appeal to the Oregon Supreme Court.

## Court Submissions

11. What factual materials are submitted to the court (for example, the trial court record, excerpts of the record, an appendix)? When and by whom?

The record on review before the Oregon Supreme Court consists of the same record that was before the Oregon Court of Appeals (see [State Q&A, Initial Civil Appeals: Oregon: Question 10](#)).

12. What briefs are filed and when? Does this change when there is a cross-appeal?

## Filing Briefs

The petition for review must be filed in the form of a brief. Unless the Oregon Supreme Court grants an extension, a party must file the petition within 35 days of the Oregon Court of Appeals' decision (or 14 days in the case of a summary determination of appealability). ([Or. Rev. Stat. §§ 2.520 and 19.235\(3\)](#); [Or. R. App. P. 9.05 and 2.35\(4\)](#).)

A party must file a response to a petition for review within 14 days after the petition is filed. A response may include the party's contingent request for review in the event the court grants the petition for review. Filing a response is optional. In the absence of a response, the party's brief in the Court of Appeals will be considered as the response. ([Or. R. App. P. 9.10\(1\), \(2\)](#).)

If the Oregon Supreme Court allows review and the petitioner has given notice of its intent to file a brief on the merits, the petitioner has 28 days after the date review is allowed to file the brief ([Or. R. App. P. 9.17\(2\)\(a\)](#)). The brief must include:

- Concise statements of the legal questions presented on review and of the proposed rules of law.
- A concise statement of:
  - the nature of the action or proceeding;
  - the relief sought in the trial court; and

- the nature of the judgment rendered by the trial court.
- A statement of facts.
- A summary of the argument.
- The argument.
- A conclusion specifying with particularity the relief the party seeks.

(Or. R. App. P. 9.17(2)(b).)

The respondent must file its merits brief within 28 days after the petitioner's brief is due. If the petitioner has elected not to file a merits brief, the respondent must file its merits brief within 28 days after the petitioner's brief on the merits on review is due. The respondent can omit any of the required contents of the merits brief if it is satisfied with the presentation of those items in the petitioner's merits brief. (Or. R. App. P. 9.17(3)(a), (b).)

## Briefing after Cross-Appeal

If a respondent raises a conditional request for review in its response to a petition, the respondent would brief that issue in its merits brief (Or. R. App. P. 9.10).

When the Oregon Supreme Court allows separate petitions for review, one party is deemed the cross-petitioner. That party files an answering brief to the petitioner's merits brief that is typically combined with the party's brief on the merits of the party's own petition.

13. How, if at all, can a party extend the time to file a brief (for example, stipulation, so-ordered stipulation, motion)?

A party may request an extension to file a merits brief in the Oregon Supreme Court by motion (Or. R. App. P. 7.25).

The motion must include:

- The date of the decision of the Court of Appeals of which review is sought.
- The brief's due date.

- The date to which the extension is requested.
- Whether it is the first or other request.
- The specific circumstances justifying the extension.

(Or. R. App. P. 7.25(2).)

Extensions of time to file merits brief are usually limited. When the court allows review, it typically schedules oral argument for a particular date and provides that parties will be permitted no more than one 14-day extension.

14. Are there word or page limits for briefs? If so, please indicate:

- The word or page limit for each type of brief (for example, appellant's brief, appellee's brief, reply brief).
- How, if at all, a party can obtain permission to exceed the usual limit (for example, stipulation, so-ordered stipulation, motion).

## Word or Page Limits

The petition for review and any response must not exceed 5,000 words (or 15 pages if the preparer does not have access to a word-processing system that provides a word count) (Or. R. App. P. 9.05(3)(a) and 9.10(3)).

Merits briefs in the Oregon Supreme Court must comply with the following limits:

- Opening and answering briefs must not exceed 14,000 words (or 50 pages if the preparer does not have access to a word-processing system that provides a word count).
- A combined respondent's answering brief and cross-petitioner's opening brief must not exceed 22,000 words, with the answering brief portion limited to 14,000 words.
- A combined cross-respondent's answering brief and petitioner's reply brief may not exceed 12,000 words, with the reply brief portion limited to 4,000 words.
- A reply brief may not exceed 4,000 words (or 15 pages if the preparer does not have access to a word-processing system that provides a word count).

(Or. R. App. P. 5.05(1)(b)(i), (c) and 9.17(2)(c).)

## Oversized Briefs

A party may request permission to file an oversized brief with a motion stating "a specific reason for exceeding the prescribed limit." The party must make every reasonable effort to file this motion no less than seven days before the brief is due, or the court may deny the motion. (Or. R. App. P. 5.05(2)(a)).

## Oral Arguments

15. Is oral argument available? If so, please indicate:

- Any restrictions on what types of cases may be argued.
- Whether the parties can request oral argument or submission on the papers.
- How much time each party or side typically receives for argument.

## Types of Cases That May Be Argued

The Oregon Supreme Court hears oral argument on all cases it accepts for review (Or. R. App. P. 6.15(1)).

## Party Involvement in Decision

Because all cases accepted for review in the Supreme Court are argued, there is no party involvement in the decision to have argument (Or. R. App. P. 6.15(1)).

## Length of Oral Arguments

Each side may have no more than 30 minutes to argue. The petitioners may reserve no more than ten minutes for rebuttal. (Or. R. App. P. 6.15(1).)

Any motion for additional time must be filed at least seven days in advance of the argument (Or. R. App. P. 6.15(3)).