

# Initial Civil Appeals: Oregon

by **Thomas W. Sondag** and **Peter D. Hawkes**, *Lane Powell PC*, with Practical Law Litigation

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*A Q&A guide to appealing from a trial court of general jurisdiction 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, arguing the appeal, and requesting rehearing. Answers to questions can be compared across a number of jurisdictions (see [Initial Civil Appeals: State Q&A Tool](#)).*

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## Overview of State Appeals

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## Overview of State Appeals

1. What types of rulings can a party appeal as of right (for example, final judgments, preliminary injunctions, interlocutory orders)?

In Oregon, a party may appeal the following rulings of a circuit court (Oregon's trial court of general jurisdiction) to the Court of Appeals (Oregon's intermediate appellate court) as of right:

- A limited judgment, general judgment, or supplemental judgment.
- An order in an action that affects a substantial right and that effectively determines the action to prevent a judgment in the action.

- An order that is made in the action after a general judgment is entered and that affects a substantial right, including an order granting a new trial.
- An order denying a petition to compel arbitration or granting a petition to stay arbitration.

(Or. Rev. Stat. §§ 19.205(1) to (3) and 36.730(1).)

A party to a judgment given by confession or for want of an answer may appeal from the judgment as of right only if either:

- The party is a plaintiff, third party plaintiff, or a party who has pleaded a cross-claim or counterclaim, and the judgment is not in accord with the relief demanded in the complaint.
- The party is a defendant against whom the trial court either entered a default judgment as a sanction or denied a motion to set aside a default order or judgment.
- The party is a defendant and the judgment is void.

(Or. Rev. Stat. § 19.245(2).)

A party to a stipulated judgment may appeal from this judgment only if:

- It specifically provides that the party reserves the right to appellate review of a ruling.
- The appeal presents a justiciable controversy.

(Or. Rev. Stat. § 19.245(3).)

If the action is only to recover money or damages, a party may appeal to the Court of Appeals if the pleadings demonstrate that the amount in controversy exceeds \$250 (Or. Rev. Stat. § 19.205(4)).

A party may also appeal as of right any special statutory proceedings as in other actions unless the law authorizing the special statutory proceeding prohibits appeal (Or. Rev. Stat. § 19.205(5)).

Moreover, a party may appeal certain narrow categories of trial court rulings directly to the Oregon Supreme Court as of right, including:

- The issuance or denial of any temporary injunction in a case involving or growing out of a labor dispute (Or. Rev. Stat. § 662.120).
- A judgment holding, in whole or in part, that a measure initiated by the people or referred to the people for a vote is unconstitutional (Or. Rev. Stat. § 250.044(5)).

2. What types of rulings, if any, can a party appeal by permission (for example, interlocutory orders)?

The Oregon Court of Appeals has discretion to hear an appeal on an order where all of the following are satisfied:

- The case is a class action under [Or. R. Civ. P. 32](#).
- The order is otherwise not appealable.
- The circuit court states in writing that:
  - the order involves a controlling question of law to which there is substantial ground for difference of opinion; and
  - an immediate appeal from the order may materially advance the ultimate termination of the litigation.

([Or. Rev. Stat. § 19.225](#).)

## Writs

In extraordinary circumstances, parties in civil cases may file an original action in the Oregon Supreme Court for a writ of mandamus. The writ of mandamus commands the circuit court to either:

- Change its decision (a peremptory writ).
- Show cause why it should not (an alternative writ).

([Or. Const. Art. VII \(Amended\), § 2](#); [Or. Rev. Stat. 34.110](#).)

A mandamus proceeding is not an appeal, but rather is an original Supreme Court proceeding. However, a mandamus proceeding functions much like a discretionary interlocutory appeal.

A writ of mandamus is considered an extraordinary remedy and is available only when there is no plain, speedy, and adequate remedy in the ordinary course of the law ([Or. Rev. Stat. § 34.110](#)). If a ruling can later be challenged in connection with an appeal from a final judgment, the writ is not available.

In considering whether to grant the writ, the Supreme Court looks to whether the trial court committed clear error ([Or. Const. Art. VII \(Amended\), § 2](#); [Or. Rev. Stat. § 34.110](#); *Lindell v. Kalugin*, 297 P.3d 1266, 1277 (Or. 2013)).

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

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

In equitable proceedings, the Court of Appeals may "try the cause anew upon the record" or make new fact findings (Or. Rev. Stat. § 19.415(3)(b); Or. R. App. P. 5.40(8)). However, such **de novo** review is disfavored (Or. R. App. P. 5.40(8)(c)).

If the appeal is from a judgment in a proceeding for the termination of parental rights, the Court of Appeals must "try the cause anew upon the record" (Or. Rev. Stat. § 19.415(3)(a)).

## Starting an Appeal

4. When must a party start an appeal?

A party in Oregon must start an appeal within 30 days after the judgment or the order being appealed from is entered in the court register. If a motion for a new trial is timely filed, however, a party must appeal within 30 days after either:

- Entry of the order disposing of the motion.
- The motion is deemed denied.

(Or. Rev. Stat. § 19.255(1), (2).)

A party must file a cross-appeal within ten days after the expiration of the time for filing an appeal. Any party who is not an **appellant** or respondent, but who becomes an adverse party to a cross-appeal, may cross-appeal against any party to the appeal by a written statement in its brief. (Or. Rev. Stat. § 19.255(3).)

A party seeking a discretionary interlocutory appeal in a class action must apply to the Court of Appeals within ten days after entry of the order sought to be reviewed (Or. Rev. Stat. § 19.225).

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

The time limits to start an appeal in Oregon are jurisdictional and cannot be waived or extended ([Or. Rev. Stat. § 19.270\(2\)](#)).

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

A party starts an appeal as of right by filing a notice of appeal with the reviewing Oregon court and serving the notice on:

- All parties who have appeared in the action.
- The trial court administrator.
- The trial court transcript coordinator if a transcript is designated for the appeal.

([Or. Rev. Stat. § 19.240\(2\)](#).)

The notice of appeal must include:

- The title of the case.
- The names of the parties, their attorneys, and the litigant contact information under [Or. R. App. P. 1.30](#).
- A postal and email address for the appellant (if **pro se**) or its counsel.
- A notice to each party or the attorney for the party that an appeal is taken from the judgment or some specified part of the judgment and designating the adverse parties to the appeal.
- If known, the postal and email address for all other parties to the appeal.
- The name of the court and county from which the appeal is taken and the name of the judge or judges who signed the judgment being appealed.

- A designation of those portions of the proceedings to be transcribed and exhibits to be included in the record in addition to the trial court file, including:
  - if an audio or video recording was played in the trial court, the date the recording was played; and
  - if a transcript of the recording is desired, a statement to that effect.
- A plain and concise statement of the points on which the appellant intends to rely, unless the entire record is designated for inclusion on appeal.
- If more than 30 days have elapsed since the judgment was entered, an explanation for why the appeal is nevertheless timely.
- If appellate jurisdiction is in doubt, citation to statutes or case law to support jurisdiction.
- Proof of service specifying the date of service on all other parties who appeared in the trial court, the trial court administrator, and, if service is necessary, the transcript coordinator.
- A certificate of filing specifying the date on which the notice of appeal was filed with the Oregon Court of Appeals administrator.
- A copy of the judgment, decree, or order appealed from and of any other orders pertinent to appellate jurisdiction.
- The signature of the appellant or its attorney.

(Or. Rev. Stat. § 19.250(1); Or. R. App. P. 2.05.)

7. How does a party start an appeal by permission (for example, motion to the appellate court, motion to the trial court)?

A party seeking a discretionary interlocutory appeal in a class action must file an application with the Oregon Court of Appeals. The application must be filed within ten days of entry of the circuit judge's order stating that an immediate appeal would advance termination of the litigation. (Or. Rev. Stat. § 19.225.)

## Stays Pending Appeal

8. How, if at all, can a party stay the lower court's ruling pending appeal (for example, posting a bond, making a motion, automatically by appealing)?

The filing of a notice of appeal in Oregon does not automatically stay the appealed judgment ([Or. Rev. Stat. § 19.330](#)).

## Stays by Supersedeas

A party may obtain a stay of the appealed judgment by making a supersedeas undertaking, if the undertaking provides that:

- If the judgment is for the recovery of money, the appellant will pay the judgment to the extent that the judgment is affirmed on appeal.
- If the judgment requires the transfer or delivery of possession of real property, the appellant:
  - will not commit or allow waste while the appellant possesses the property; and
  - will pay the value of the use and occupation of the property (in an amount stated in the undertaking) for the period of possession if the judgment is affirmed.
- If the judgment requires the transfer or delivery of possession of personal property, the appellant will obey the judgment of the appellate court, and if the appellant does not obey the judgment, the appellant will pay an amount determined by the trial court and stated in the undertaking.
- If the judgment requires the foreclosure of a mortgage, lien, or other encumbrance, and also requires payment of the secured debt, the appellant will pay any portion of the judgment remaining unsatisfied after the sale of the property subject to the mortgage, lien, or other encumbrance in an amount stated in the undertaking.

([Or. Rev. Stat. § 19.335\(1\)](#), [\(2\)](#), [\(3\)\(a\)](#), and [\(4\)](#).)

Undertakings for the payment of money generally require a bond or other security deposit. A surety for an undertaking must satisfy specified requirements. ([Or. Rev. Stat. § 19.305](#); [Or. R. Civ. P. 82](#).)

If the judgment requires the transfer or delivery of possession of personal property, the appellant can obtain a stay without filing a supersedeas undertaking if the appellant transfers or delivers the personal property to the court or places the property in the custody of an officer or receiver appointed by the trial court ([Or. Rev. Stat. § 19.335\(3\)\(b\)](#)).

If a judgment requires the execution of a conveyance or other instrument, the judgment is stayed without the filing of a supersedeas undertaking if the appellant executes the instrument and deposits the instrument with the trial court administrator ([Or. Rev. Stat. § 19.335\(5\)](#)).

If the judgment is on a contract, the respondent may enforce the judgment notwithstanding a supersedeas undertaking. To do so, the respondent must, within ten days from the time the appeal is perfected, file an undertaking providing that if the judgment is reversed or modified, the respondent will make any restitution as the appellate court may direct. ([Or. Rev. Stat. § 19.345.](#))

## Discretionary Stays

The trial court has discretion to either:

- Stay a judgment without requiring a supersedeas undertaking.
- Reduce the amount of the undertaking if the appellant is an executor, administrator, trustee, or other person acting on behalf of another.

([Or. Rev. Stat. § 19.340\(1\).](#))

If a judgment may not be otherwise stayed under [Or. Rev. Stat. §§ 19.335](#) or [19.340](#), a party can seek a discretionary stay of the judgment ([Or. Rev. Stat. § 19.350\(1\)](#)). The party must first seek the stay from the trial court unless the party establishes that either:

- A request to the trial court would be futile.
- The trial court is unable or unwilling to act on the request within a reasonable time.

([Or. Rev. Stat. § 19.350\(2\), \(5\).](#))

In deciding whether to grant a stay, the court considers:

- The likelihood of success on appeal.
- Whether the appeal is taken in good faith and not for the purpose of delay.
- Whether there is any support in fact or law for the appeal.
- The nature of the harm that will likely result from the grant or denial of a stay to:
  - the appellant;
  - other parties;
  - other persons; and
  - the public.

(Or. Rev. Stat. § 19.350(3).)

The court has discretion to impose reasonable conditions on the grant of a discretionary stay, including requiring a supersedeas undertaking in a specified amount (Or. Rev. Stat. § 19.350(4)).

## Preliminary Matters

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

In Oregon, most civil appeals are selected by the court for referral to the [Appellate Settlement Conference Program](#).

During this program, the court holds the preparation of the record and briefing in abeyance for a period of 120 days. That abeyance period may be extended up to 60 days (or longer with the parties' consent) if the parties need additional time to finalize or implement a settlement. (Or. R. App. P. 15.05(4)(a).)

The appeal may be reactivated on the program director's own motion or on motion of a party showing good cause for doing so (Or. R. App. P. 15.05(4)(c)).

## Court Submissions

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

## Factual Material

In any appeal from an Oregon trial court, the record on appeal includes:

- The trial court's file.
- Any exhibits.

- As much of the record of oral proceedings as has been designated by the parties.
- Any audio or video recording played in the trial court.

(Or. R. App. P. 3.05(1), (2)(c); Or. Rev. Stat. §§ 19.250(1)(e) and 19.365(2).)

On motion of a party or on its own, the appellate court can add anything else from the trial court record or oral proceedings, whether or not designated by the parties (Or. Rev. Stat. § 19.365(4); Or. R. App. P. 3.05(3)).

In addition, the transcriber must:

- Prepare and serve the transcript by the later of 30 days after either:
  - the filing of the notice of appeal; or
  - the expiration of any abeyance of the appeal imposed due to referral to the appellate settlement program.
- File a certificate of preparation with the State Court Administrator.

(Or. Rev. Stat. § 19.370(2), (3).)

The parties then have 15 days to bring a motion in the trial court to correct or add to the transcript (Or. Rev. Stat. § 19.370(6)). If no motion is filed during that period, the transcript is deemed automatically settled (Or. Rev. Stat. § 19.370(7)).

In lieu of a transcript:

- The parties may file an agreed narrative statement, which must be filed with the trial court administrator within 30 days after the filing of the notice of appeal (Or. Rev. Stat. § 19.380; Or. R. App. P. 3.45).
- On motion of a party showing good cause, the Court of Appeals can waive preparation of a written transcript and proceed with an audio or video record (Or. R. App. P. 3.05(2)(b)).

The appellant must include certain materials in an excerpt of record. These materials include:

- The judgment or order on appeal.
- Any written or oral rulings addressing the issues presented.
- Relevant pleadings, excerpts of pleadings, portions of the transcript, exhibits, or other filings necessary for reviewing and understanding the assignments of error.
- When preservation of error is or may be disputed, parts of the memoranda and transcript pertinent to preservation.

- A copy of the circuit court case register.

(Or. R. App. P. 5.50(1), (2).)

The respondent may file a supplemental excerpt of record (Or. R. App. P. 5.50(4)).

## Timing

The transcriber must serve the transcript on the parties within 30 days after the later of:

- The filing of the notice of appeal.
- Expiration of any abeyance imposed due to referral to the appellate settlement program.

(Or. Rev. Stat. § 19.370(2), (3).)

The parties file the excerpts of record with their primary briefs (Or. R. App. P. 5.50(1)).

The trial court administrator must promptly forward the record on the request of the appellate court (Or. R. App. P. 3.15(2)).

## Responsible for Filing

The trial court administrator files the record with the Oregon Court of Appeals (Or. R. App. P. 3.15(1)). The transcriber prepares and serves the transcript (Or. Rev. Stat. § 19.370(2), (3)). The appellant files the excerpt of record and the respondent files the supplemental excerpt (Or. R. App. P. 5.50(1), (4)).

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

## Filing Briefs

In Oregon, there are usually three appellate briefs:

- The opening brief.
- The answering brief.

- The reply brief.

The appellant must serve and file its opening brief and excerpt of record within 49 days after one of the following:

- The entry of the trial court order settling the transcript.
- The filing of an agreed narrative statement with the trial court.
- The transcript is deemed settled.
- The appellate court enters an order waiving a transcript.
- The filing of the notice of appeal, if a transcript or narrative statement is not designated.
- The agency record has been settled, in a judicial review case.

(Or. R. App. P. 5.80(1).)

The respondent must serve and file its answering brief within 49 days after the opening brief (Or. R. App. P. 5.80(2)).

The appellant must serve and file its reply brief within 21 days after the filing of the answering brief (Or. R. App. P. 5.80(3)). Reply briefs are optional in most cases and are not permitted without court order in certain narrow classes of cases (Or. R. App. P. 5.70(1), (3)).

## Briefing After Cross-Appeal

When a respondent has cross-appealed:

- The opening brief on the cross-appeal must be presented in a separate part of the respondent's answering brief immediately following the body of the answering brief (Or. R. App. P. 5.65(1)).
- The appellant must serve and file its answering brief on the cross-appeal (combined with the reply on the initial appeal if a reply is being filed) within 49 days after the opening brief on the cross-appeal (Or. R. App. P. 5.80(4)).
- The cross-appellant may serve and file a reply on the cross-appeal within 21 days after the answering brief on the cross-appeal (Or. R. App. P. 5.80(6)).

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

A party may move to extend the time to file a brief in Oregon ([Or. R. App. P. 7.25\(1\)](#)). The motion must include:

- The date the notice of appeal was filed.
- 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\(2\)](#).)

A party may orally request an extension of time of no more than 14 days by telephoning the court administrator, so long as the party:

- Gave prior notice to the other parties to the appeal.
- Has not previously obtained a written extension of more than 28 days.

([Or. R. App. P. 7.27\(1\)](#).)

13. 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

Briefs in the Oregon Court of Appeals are subject to the following word limits:

- An opening brief must not exceed 10,000 words.
- An answering brief must not exceed 10,000 words.
- A combined respondent's answering brief and cross-appellant's opening brief must not exceed 16,700 words, with the answering brief part of the combined brief limited to 10,000 words.
- A combined cross-respondent's answering brief and appellant's reply brief must not exceed 10,000 words, with the reply brief part of the combined brief limited to 3,300 words.
- A reply brief must not exceed 3,300 words.

(Or. R. App. P. 5.05(1)(b)(ii).)

If a party does not have access to a word-processing system that provides a word count, the following rules apply to briefs in the Court of Appeals:

- An opening, answering, or combined brief is acceptable if it does not exceed 35 pages.
- A reply brief or reply part of a combined reply and cross-answering brief is acceptable if it does not exceed 10 pages.

(Or. R. App. P. 5.05(1)(c).)

## Oversized Briefs

A party may move to file an oversized brief or excerpt of record by stating "a specific reason for exceeding the prescribed limit" (Or. R. App. P. 5.05(2)(a)).

## Oral Arguments

14. 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

Oral argument is available in most cases in the Oregon Court of Appeals ([Or. R. App. P. 6.05](#)).

Oral argument is not available in cases in which a self-represented party has filed a brief, unless the self-represented party is an attorney representing himself ([Or. R. App. P. 6.05\(3\)](#)).

## Party Involvement in Decision

After receiving the Court of Appeals Administrator's notice of the date that a case is scheduled to be submitted to the court, a party wanting oral argument must file a request for oral argument and serve it on every other party to the appeal within:

- 14 days after the date of the notice in juvenile dependency, adoption, and certain land use cases.
- 28 days after the date of the notice in all other cases.

([Or. R. App. P. 6.05\(2\)\(b\)](#).)

## Length of Oral Arguments

In the Court of Appeals, each side has up to 15 minutes to argue. The appellant may reserve no more than five minutes for rebuttal. ([Or. R. App. P. 6.15\(2\)](#).)

Any motion for additional time must be filed at least seven days before the argument ([Or. R. App. P. 6.15\(3\)](#)).

## Rehearing for State Appeals

15. Is there a mechanism for rehearing (panel or en banc)? If so, please describe:

- The process for requesting rehearing (for example, petition, motion).
- The process for presenting the merits if the court grants rehearing (for example, decision on the existing papers, new argument, new briefing).

## Requesting Rehearing

A party can seek reconsideration of a decision of the Oregon Court of Appeals by the same panel (or *en banc* if the original decision was *en banc*) (Or. R. App. P. 6.25).

A party seeking reconsideration must file a petition for reconsideration with the Court of Appeals within 14 days after the decision (Or. R. App. P. 6.25(2)). Any response must be filed within seven days after the petition is filed. However, the court will not wait for the response to begin consideration. (Or. R. App. P. 6.25(4).)

## Rehearing Procedure

In the Court of Appeals, a petition for reconsideration must be based on one or more of the following:

- Factual error in the decision.
- Error in the procedural disposition of the appeal.
- Error in the designation of the prevailing party or award of costs.
- A change in the law since the decision.
- An error in construing and applying the law. However, the court disfavors claims addressing legal issues that have already been argued and addressed.

(Or. R. App. P. 6.25(1).)

In deciding a petition for reconsideration, the Court of Appeals reviews the petition and any response filed (Or. R. App. P. 6.25(4)). The Oregon Rules of Appellate Procedure do not provide for oral argument or further briefing.