



OREGON JUDICIAL DEPARTMENT
Appellate Court Records Section, 503-986-5555

**INFORMATION ON FILING A NOTICE OF APPEAL
(CIRCUIT COURT HABEAS CORPUS / POST-CONVICTION)**

In response to your request, we have enclosed information on how to file a notice of appeal and the forms necessary to do so.

GENERAL INFORMATION

1. Please understand that filing and pursuing a case with the appellate court is technical legal work. Read all of these instructions, completely and carefully, because you must follow the relevant Oregon Revised Statutes (ORS) and the Oregon Rules of Appellate Procedure (ORAP). We strongly urge you to consider use of an attorney to help you with your case. The Supreme Court, Court of Appeals, or Appellate Court Administrator's Office cannot change the rules for you because you act as your own lawyer. You will have to follow all the rules and meet all deadlines, without exception.

Provisions of ORS Chapters 34 and 138 apply to habeas corpus and post-conviction cases. ORAP Chapters 2 and 3 apply to appeals of circuit (trial) court decisions in general.

If you are financially eligible, you are entitled to be represented by counsel provided by the Public Defense Service Commission, usually the Legal Services Division of the Office of Public Defense Services. ORS 138.500.

You may wish to access reference materials, including the ORS or ORAP online at www.courts.oregon.gov/programs/acrs/Pages/default.aspx. To access the ORS or ORAP, go to <http://www.courts.oregon.gov/programs/acrs/resources/Pages/default.aspx> and choose "Oregon Revised Statutes (ORS)", or choose "Oregon Rules of Appellate Procedure (ORAP)". The ORS and ORAP are also available in law libraries and some public libraries.

If you need additional information about procedures, you may call the Records Section at 503-986-5555; however, while the staff can try to answer procedural questions, staff cannot provide legal advice. In other words, they will not substitute in any way for a lawyer's assistance.

If you wish to seek legal advice, you may contact the Oregon State Bar at 503-620-0222 or toll free in Oregon at 1-800-452-8260 for information as to appellate attorneys. You may contact the Lawyer Referral Service at 503-684-3763, or toll free in Oregon at 1-800-452-7636.

2. Generally, you will not be able to introduce new evidence to the appellate court. The court will review the record (testimony, documents, legal argument) that was received into the trial court record.
3. **Motions:** A "motion" is any request by a party that the court take some action. All motions must be served on the adverse party and the adverse party has 14 days from the date a motion is filed to serve a response. A response allows the court to consider the adverse party's point of view in deciding what action to take concerning the motion. See ORAP 7.05 to 7.55 for rules concerning motions. ORAP 7.30 lists the motions that toll the time for filing the next event. The court will usually issue a decision on a motion in the form of a written order.
4. **Any document filed with the Court of Appeals must be served on all parties to the case or, if a party is represented by an attorney, on that party's attorney.** See ORAP 1.35(2); ORCP 9 B. The document being filed must include a statement of service ("proof of service") which states that the document has been served on all parties.

WHERE TO FILE

To file a notice of appeal, you must file an original notice of appeal with the Court of Appeals by submitting it to the following address:

ATTN: Records Section
Appellate Court Administrator
Supreme Court Building
1163 State Street
Salem, OR 97301-2563

WHEN TO FILE

Generally, a notice of appeal from a trial court decision in a habeas corpus or post-conviction case must be filed within 30 days from the date the decision is entered in the trial court register. See ORS Chapters 34 and 138 for more information concerning the time allowed to file a notice of appeal. **Unless a notice of appeal is filed and served within the time required by statute, the Court of Appeals will not be able to consider your case.** "Filed" means that the petition must either 1) be in the possession of the Office of the Appellate Court Administrator on or before the date it is due, or 2) it must be mailed by certified or registered mail on or before the date it is due, with proof from the United States Post Office of such mailing date. See ORS 19.260(1) and ORAP 1.35. (If you choose option 2, be sure to retain the proof of mailing, because you may be asked to send it in if the timeliness of your appeal is ever questioned). "Served" means that an exact copy of the original document(s) that is being filed at the Court of Appeals, is mailed or personally delivered to all other necessary parties and participants according to the applicable statutes.

HOW TO FILE

1. File an original notice of appeal with the Court of Appeals. You should attach to the notice of appeal a copy of the decision that you wish to have reviewed.

2. A filing fee is not required in an appeal from a habeas corpus or post-conviction case.
3. You must complete a Certificate of Filing that indicates the date that you filed your notice of appeal, and the method that you used to file your notice of appeal.
4. You must serve copies of the notice of appeal and all attachments that you file with the Court of Appeals, to the parties listed on the certificate of service provided in this packet and any other party required by statute. See ORAP 2.05(10); ORCP 9 B. The document(s) being filed must also include a certificate (or proof) of service, that identifies everybody you have served. A certificate of service is enclosed.

WHAT HAPPENS NEXT?

1. The record is prepared: The lower court file will always be part of the record on appeal. You decide in the first instance whether you want to make exhibits and the transcript part of the record on appeal. The act of informing the appellate court and other parties to the appeal of how much of the trial court record is to be the record on appeal is called "designating the record." Generally, the party who designates a transcript is responsible for making arrangements with the trial court transcript coordinator for both preparation and payment. See ORS 19.375. The transcript is required to be filed with the parties to the appeal within 30 days from the date the notice of appeal is filed. The assigned transcriber must then file the transcript electronically with the Court of Appeals. Usually, the transcript is "settled" 15 days after it is filed with the parties. ORS 19.365 and ORAP Chapter 3 contain provisions regarding the preparation and filing of the transcript and trial court record. Once the transcript is "settled," the due date for the opening brief is scheduled.
2. Briefs are prepared: A "brief" is a statement of your side of the case. You must follow the format required by the rules. See ORAP 5.05 through 5.80 for more information about the procedures concerning briefs. Further, you may access several sample briefs at: <http://www.courts.oregon.gov/programs/acrs/briefs-motions/Pages/briefs.aspx>. You are required to file an "opening brief" within 49 days of the date that the transcript is settled. The opening brief must include a statement of the facts of the case. Each statement of fact must refer to the record and show where that fact appears. If it does not, the court may strike the entire brief or disregard your argument. Appeals are for the purpose of reviewing claimed legal errors committed by the trial court in rulings on motions or in the final decision. Appeals are not for the purpose of introducing new factual evidence to support your point of view. Therefore, if you try to include new evidence on appeal, it will not be considered and the court may decide not to consider your brief or argument at all. You must serve two copies of your brief on all parties to the appeal, and your brief must contain a certificate of service.

The rules also require that you tell the court, in your brief, what mistake you believe the trial court made. These are called "assignments of error," and they must be very specific. The rules require that you set out in the brief the exact words used by the trial court when it made what you claim to be an error. After each "assignment of error," you have to make your "argument." This is a brief statement of the legal reasons why the trial court was wrong. You ordinarily may not include in your brief a statement about anything that has happened after the date of entry of the decision

that you are appealing.

The "answering briefs" (briefs from the respondent(s)) are due 49 days after you file your opening brief. All briefs must be prepared according to the ORAP and applicable statutes, or they may be stricken. A respondent filing a brief must serve two copies of their answering brief on you.

3. After briefing and oral argument, if there is one, your case is submitted for decision. See ORAP 5.60, 6.05(2), and 6.10(4) concerning who may argue. It will ordinarily take from one week to several months for the court to decide your case. Many cases are decided without a full written "opinion." This means that the court may decide your case without writing any explanation of the reasons for its decision. You will receive a copy of the court's decision.

WHAT IF I DISAGREE WITH THE COURT OF APPEALS?

If you disagree with the Court of Appeals decision, you have 14 days to file for reconsideration with the Court of Appeals. If you do file for reconsideration and you disagree with that decision, you may file a petition for review with the Supreme Court within 35 days from that decision date under ORAP 9.05. If you do not file for reconsideration of the Court of Appeals decision, your petition for review to the Supreme Court is due 35 days from the date of the Court of Appeals decision. Filing a petition for review gives you a chance to tell the Supreme Court why you believe that the Court of Appeals made a mistake when it issued its decision on your appeal.

If a petition for review has been properly filed by any party, the appellate judgment in the case cannot issue until the Oregon Supreme Court decides to allow or deny review. If the Oregon Supreme Court denies the petition for review, that is ordinarily the end of the case in the Oregon courts. The Records Section of the Appellate Court Administrator's Office will issue the "appellate judgment." The appellate judgment is the document that officially notifies the trial court of the appellate court's decision and transmits the case back to the trial court.

Note: A case before the Court of Appeals or Supreme Court may result in a published opinion that includes the names of the parties involved, and often times recites facts of the case. If you do not want such information distributed in print or on the Internet, you may wish to review the applicable administrative rules and/or consult with legal counsel to explore whether it may be possible to limit this distribution

INSTRUCTIONS FOR COMPLETING THE NOTICE OF APPEAL

CAPTION

On line 1 write in the name of each of the plaintiff(s) in the trial court. You can get the name(s) by looking at the heading on one of the documents filed in that court. On line 2 fill in the name of each of the defendant(s) in the trial court. Again, you can get this information by looking at the trial court heading.

TRIAL COURT INFORMATION

Fill in the name of the trial court and the trial court case number on the lines provided. The case number is written on all of the documents filed in that court.

SECTION 1a

Fill in your name.

SECTION 1b

Give the date the judgment from which you are appealing was **entered** in the trial court register. If the date of entry does not appear on your copy of the judgment, you should contact the trial court and request the date of entry. **A copy of the judgment should be attached to your notice of appeal.**

SECTION 1c

Fill in the name of the judge who signed the judgment.

SECTION 1d

Fill in the name of the county in which the trial court is located.

SECTION 2

Fill in your name, address, phone number, and email address. If you use the form provided by the court and provide your email address, you are agreeing to receive all correspondence from the court by email. If you do not use the court's form, you must specifically ask that the court use your email address. You can do this by writing a statement next to your email address that you agree to receive all court correspondence by email. (**Note:** You cannot file documents through email. Your email address will only be used by the court to send documents to you.) In addition, you agree that you will keep your email address current with the court. If you later wish to discontinue receiving court correspondence via email, you must notify the court and provide a mailing address. Fill in the name and address for the respondent(s). Do not write the names of the attorneys in section 2.

SECTION 3

List the name, bar number, address and telephone number of each party's attorney and who the attorney represents. If a party is not represented by an attorney, then list the party's name and address, and telephone number (if known).

SECTION 4

Mark the appropriate statement indicating your designation of record. The first statement designates all portions of the trial court record. The second statement designates only certain portions of the trial court record, in which case, you need to indicate what portions of that record you wish to have as the record on appeal.

SECTION 5

Explain the basis for the appeal or the issues you will be relying upon to support your appeal. You only need to complete this statement if you did not designate the entire record in Section 4. This should only be a brief statement. You will have the chance to fully explain your case when you file your brief.

SECTION 6

Explain why this appeal is filed timely.

SECTION 7

Attach to the notice of appeal a copy of the decision that you wish to have reviewed.

Sign and date the notice of appeal. The signature must be an original.

INSTRUCTIONS FOR COMPLETING CERTIFICATE OF FILING

- Fill in the date that you filed the notice of appeal with the Appellate Court Administrator.
- Mark the method of filing that you used to file the notice of appeal.
- Sign the certificate of filing.

INSTRUCTIONS FOR COMPLETING CERTIFICATE OF SERVICE

- Fill in the date that you served copies of the notice of appeal, and all other related documents, to the other parties.
- Although the names and addresses for some of the parties have been provided, you will need to fill in the name and address for any other parties that you served.
- Mark the method of service that you used to serve the parties.
- Sign the certificate of service.

Sign the certificates of service and of filing; only original signatures are accepted. Enter the date that you signed both certificates. You must provide copies, of all documents that you file with the Appellate Court Administrator, to the other parties who are listed on the certificate of service.

IN THE COURT OF APPEALS OF THE STATE OF OREGON

(LINE 1-YOUR NAME)

Plaintiff-Appellant, or
Petitioner-Appellant,

v.

(LINE 2-RESPONDENT)

Defendant-Respondent.

(CIRCUIT COURT NAME)

County Case Number _____

(CIRCUIT COURT NUMBER)

NOTICE OF APPEAL

1.

(a) _____ hereby gives notice of appeal from the judgment entered on

(b) _____, by Judge (c) _____ in (d) _____

County Circuit Court.

2.

The parties to this appeal are:

Appellant :

YOUR NAME, ADDRESS, and PHONE NUMBER (and EMAIL ADDRESS if you agree to receive all court correspondences by email)

Respondent:

(NAME and ADDRESS)

3.

If the respondent (on appeal) is represented by counsel, provide the name, bar number, and address of the respondent's attorney:

ATTORNEY FOR RESPONDENT:

Respondent's name: _____

Attorney: Attorney General

Office of the Solicitor General

Address: 400 Justice Building

1162 Court Street NE

Salem, OR, 97301

Phone: 503-378-4402

ATTORNEY FOR RESPONDENT:

Respondent's name: _____

Attorney's name: _____

Bar # _____

Address: _____

Phone: _____

4.

INDICATE YOUR DESIGNATION OF RECORD

Appellant designates the record in its entirety, up to and including the date on which the challenged decision was entered. Therefore, in addition to the trial court file, appellant designates all exhibits submitted, and the record of all oral proceedings that occurred, during that time period.

In addition to the trial court file, appellant designates only the following portions of the record:

Trial court file only. No exhibits and no oral proceedings.

All exhibits.

The record of only the following oral proceedings: _____

5.

COMPLETE ONLY IF LESS THAN THE ENTIRE TRIAL COURT RECORD IS DESIGNATED IN PARAGRAPH 4 ABOVE

Appellant intends to rely upon the following points:

6.

This appeal is timely and otherwise properly filed before the Court of Appeals because:

7.

Attached to this notice of appeal is a copy of the judgment being appealed from. Also attached are copies of any other orders pertinent to determining appellate jurisdiction.

DATE: _____ **SIGNATURE:** _____

CERTIFICATE OF FILING

I certify that on _____ DATE, I filed the original of the notice of appeal with the State Court Administrator at the following address:

**ATTN: Records Section
State Court Administrator
Supreme Court Building
1163 State Street
Salem, OR 97301-2563**

by the following method of filing:

INDICATE METHOD OF FILING

- United States Postal Service, ordinary first class mail.
- United State Postal Service, certified or registered mail, return receipt requested.
- Hand delivery
- Electronic Filing through the court's eFiling system.
- Other (specify): _____

CERTIFICATE OF SERVICE

I certify that on _____ (DATE), I served a true copy of the notice of appeal to the following parties at the addresses set forth below. **NOTE:** If an address is not already provided below then you must fill in the address for each party that you serve. If no address is present then the court will assume that you did not serve that party.

ATTORNEY GENERAL, Office of the Solicitor General, 400 Justice Building, 1162 Court Street NE, Salem, OR, 97301 _____

TRIAL COURT ADMINISTRATOR: TRIAL COURT ADDRESS _____

TRANSCRIPT COORDINATOR: TRIAL COURT ADDRESS _____

OTHER PARTIES: NAME AND ADDRESS _____

by the following method of service:

INDICATE METHOD OF SERVICE

- United States Postal Service, ordinary first class mail.
- United State Postal Service, certified or registered mail, return receipt requested.
- Hand delivery
- Other (specify): _____

DATE: _____ **SIGNATURE:** _____