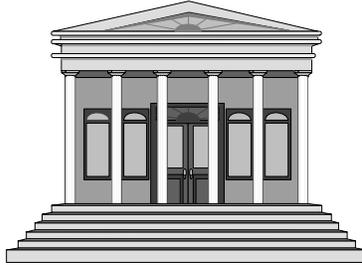


How to Prepare for Your Civil Trial*



IMPORTANT!

Remember that the law is always changing. **This brochure is not a substitute for talking to an attorney.** Civil cases can be complicated, and the judge will be making important decisions. Before representing yourself, you should do everything you can to get legal help. If you have not tried to get the help of an attorney, you should do that now. **If you need help finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at 503.684.3763 or toll-free in Oregon at 800.452.7636.**

ACKNOWLEDGMENT. *This brochure was created by the Court Programs and Services Division of the Oregon Judicial Department, based on an original version developed by the State Family Law Advisory Committee's "Self-Represented Legal Services Subcommittee" in 2005.*

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***This brochure covers civil cases that are filed in "circuit courts" and does not necessarily pertain to small claims or forcible entry and detainer (FED) cases. However, some of the information in the brochure may be helpful for these types of cases as well.**

You may obtain this publication in alternate formats, on request, by dialing 503.986.6407 (phone) or 503.986.5882 (TTY).

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WHERE ARE THE CIVIL LAW STATUTES AND TRIAL COURT RULES?



Oregon's civil laws are contained in the Oregon Revised Statutes (ORS) and are also available on the internet at <http://www.leg.state.or.us/ors/> under Oregon Revised Statutes. You may look at copies of these statutes in your county law library. The county law library will also have the Uniform Trial Court Rules and the Supplementary Local Rules for your local court. The Uniform Trial Court Rules are available on the internet at <http://www.ojd.state.or.us/programs/utcr>. The Supplementary Local Rules for your court may also be found on the Oregon Judicial Department website at <http://www.ojd.state.or.us/Web/OJDPublications.nsf/SLR?OpenView&count=1000>.

The law librarian can help you find the books you want and explain how to use the books. The law librarian cannot give you legal advice. If you want to copy any of the materials in the library, bring money in small bills to pay for the copies. The law library cannot make change for large bills.

DO YOU NEED AN ATTORNEY?

Although the judge will hear cases not involving attorneys, you should try to get the assistance of an attorney. The judge cannot give you legal advice and may not talk to you outside the courtroom about your case. An attorney can help you with complicated issues such as real and personal property rights, civil causes of action and possible relief, contract law, and personal injury/accident cases. An attorney can also assist you with the more difficult procedures that sometimes have to be followed in civil cases, such as discovery or pretrial conferences. An attorney may also be better able to negotiate an out-of-court settlement of the case. If the other party has an attorney, you may be at a disadvantage if you try to represent yourself.

WHERE CAN YOU FIND AN ATTORNEY?

LAWYER REFERRAL SERVICE: The Oregon State Bar can give you the number of an attorney in your area who does civil law cases and who will give you a one-time in-office appointment for no more than \$35.00. Call **800.452.7636** toll free, or if in Portland **503.684.3763**. You may be eligible for the **Modest Means Program** which offers legal assistance at a reduced rate in some cases. Call the same phone numbers as above for an application.



OTHER LEGAL HELP: Some attorneys may be willing to work on a sliding fee scale based on your income or to provide you with limited legal assistance, sometimes called "unbundled legal services." An attorney who does this will represent you on only a part of your case, not for the entire matter; for example, to review forms, to give you "coaching" before a hearing, or to do some research on a particular issue. The cost to you is less than the cost of full representation. For referrals to such attorneys, contact the Oregon State Bar **800.452.7636**. Some courts may have a list of local attorneys who provide low-cost or unbundled legal services. You may also want to check the yellow pages of the phone book.

WHAT IF YOU CANNOT FIND AN ATTORNEY?

Your court may have information about where you can locate forms to file a civil case. Forms may be available from a variety of sources including the Internet, office supply stores, and in specialized software. Such forms may or may not be helpful to you depending on whether they have been created in compliance with Oregon law and whether or not they have been designed to meet your particular needs.



While court staff may answer questions about forms in some civil law matters, **they cannot provide legal advice**. Court clerks may explain how to file papers in the circuit court and can notarize your court forms. **However, an attorney is the only person who can advise you of your legal rights or tell you what is best for you in your individual situation.**

If you do not contact an attorney, or are unable to find one to represent you, you should begin preparing your case.

ALTERNATIVES TO TRIAL



If you and the other party work out an agreement before trial, either by yourselves or with the help of an attorney or mediator, you will need to prepare a document called a “stipulated” judgment (a court order) that sets out your agreement. A mediator is a third person trained to help the parties reach a settlement during confidential discussions. Your court may have a list of mediators that you can hire to help you with your case. You can also hire a private mediator not connected with the courts if you want to. For some types of cases, local community mediation centers may be helpful. You should have received information about local mediation resources at the time you filed your case or were served your court papers. If you did not, you can contact your local court for that information.

ARBITRATION

Oregon law requires the court to refer civil cases that involve \$50,000 or less (except small claims matters) to “mandatory arbitration.” If your case is assigned to arbitration, you will be notified to appear before an arbitrator. An arbitrator is a neutral third party (usually an attorney) who will act like a judge and decide your case. You may be able to be involved in the selection of the arbitrator. Ask your court clerk for information on the fee you will have to pay to the arbitrator.

The special rules for arbitration may be found in the Uniform Trial Court Rules and the Supplementary Local Rules for your court. See “Where Are the Civil Laws Statutes and Trial Court Rules” above, page 1. The information in the rest of this brochure may be helpful, not only if you go to trial, but also at your arbitration.

The arbitrator will listen to and consider your and the other party’s evidence and make a decision in your case. If you do not agree to the arbitrator’s decision, you will have to file a written notice of appeal and request for “trial de novo” [new trial] within 20 days after receiving the arbitrator’s decision. Ask the court clerk whether they have forms to do this and, if not, go to your local law library or consider hiring an attorney to help you with this part of your case. See “Where Can I Find An Attorney” above, at page 1.

For more information on mediation and arbitration in Oregon, go to the Oregon State Bar’s **Legal Info for the Public** website located at: <http://www.osbar.org/public/legallinks.html>.

DISCOVERY



Parties to a lawsuit are entitled to request certain information from the other side that is relevant and not privileged. If the other party has information that you do not have but that you think you will need in order to prove your case or your defense, you may conduct “discovery.” You may also be asked to respond to the other party’s discovery. There are several different kinds of discovery:

- Depositions (appearing in person to answer questions under oath)
- Interrogatories (written questions)
- Production of documents (providing originals or copies of requested papers)
- Physical or mental examinations (submitting to a medical or psychological exam)
- Requests for admission (asking a party to admit to a fact)

There are special formats to request or respond to discovery, and important deadlines for asking and responding to discovery. Sometimes there are costs involved. Asking for and responding to discovery is very complicated and almost always requires a legal background. You should try to hire a lawyer to help you if you feel the need to do discovery or are asked to respond to it. Some attorneys will help you with discovery without taking on your entire case (also called “unbundled legal services”). See “Where Can I Find An Attorney” above, at page 1.

PRE-TRIAL CONFERENCES

You may be required by your local court to appear at a “pre-trial conference” or a “settlement conference” to inform the court about the status of your case. The court may ask you about what the main issues are in your case, what discovery has been conducted, and how many witnesses you will have. You may receive a trial date at this time. You may also be referred to a judge for discussion about possible settlement of one or more of the issues in your case. Read your court's "Supplementary Local Rules" for more information about pre-trial or settlement conferences in your county. See “Where Are the Civil Laws Statutes and Trial Court Rules” above, page 1.

PRE-TRIAL MOTIONS

You or the other side may file “pre-trial motions.” A motion is a formal request filed with the court. For example, a “motion to dismiss” asks the court to close all or part of a case, and a “motion to setover” asks a court to set a later trial date. A judge makes a decision to allow or deny the request, usually after a hearing or trial. If you file a motion, you must “serve” a copy on the other side and give them a chance to respond, and if they file a motion, they must do the same.

PREPARING FOR TRIAL

WHAT IS A TRIAL?

A trial is a fact-finding process before a judge or a jury and where the final decisions are made in your case. Trials are open to the public. You may want to watch a civil law trial in the courtroom of your assigned judge so you can see what a trial is like.



DO I WANT TO REQUEST A “JURY” TRIAL?

In some cases, you can choose whether you want your case decided by a judge or a jury. If you choose to have a jury trial, the judge will give the jury instructions on what the law is, and the jury will be responsible for deciding the facts and applying the law. There are additional fees for jury trials.

Deciding whether to have your civil case heard before a judge or a jury is an important decision. If you decide to have a jury make the decision in your case, you should contact your local court to ask what fees you will have to pay and what forms you will have to fill out to request a jury. You will also be asked to select jury members from a pool that the court will make available in the case on the first day of trial. You will also have to submit jury instructions for the court to read to the jury at the end of your case. Requesting a jury will make your case last longer and make it more complicated and costly.

If you decide to have your case heard before a judge and not a jury, you need to notify the court of your “waiver of jury trial” within the time specified in the local court rules. See “Where Are the Civil Laws Statutes and Trial Court Rules” above, page 1. Both sides must waive jury trial or a jury will be scheduled and the fees will apply.

WHEN AND WHERE IS THE TRIAL?



You will receive a written notice from the court telling you the courtroom, day, and time of your trial. You may also call the court and ask the clerk for the date of your trial. You will usually have to pass through metal detectors at the courthouse. Knives, weapons, and pepper spray are not allowed. Each courtroom has a list of cases that are to be heard that day posted outside its doors.

WHEN SHOULD YOU GO TO THE COURTHOUSE?

Arrive early enough to give yourself time to find the courtroom, meet with your witnesses, mark your exhibits, and get organized. You should plan to arrive at least 30 minutes before your trial. If you go into the courtroom early, be quiet and polite to the court and other people who are having a case heard by the judge.

Another reason to arrive early is so that you can pay the fee if you want your court proceeding recorded. Most Oregon courts now use electronic systems for recording trials. You will be required to pay a hearing fee prior to your court appearance if you want it recorded. If the trial is not recorded, you may be giving up your right to file an appeal if you do not like or do not agree with the judge's decision.

CAN YOU RESCHEDULE THE COURT DATE?

If you do not come to the trial, the other party may win. If there is a serious reason why you cannot go to trial on the scheduled date, call the other party and the circuit court clerk right away. You will have to make a written request to the court to have the trial rescheduled. You must give the other side or their attorney, if they have one, a copy of your request.



WHAT SHOULD YOU WEAR TO THE TRIAL?

Wear clean, neat clothing such as you would wear to an important job interview. Do not wear hats, shorts, jeans, half-shirts, tank tops, sneakers, very high heels, sandals, or anything that is too tight, too short, low-cut, or shows your stomach.

DO YOU OR YOUR WITNESSES NEED AN INTERPRETER?



Do you or any of your witnesses need an interpreter? The court will provide a certified interpreter to help you in court. Call the trial court administrator or clerk's office **at least four business days** in advance of the court date. Your trial court administrator's contact information is on the back page of this brochure.

DO YOU OR YOUR WITNESSES NEED ACCOMMODATIONS UNDER THE AMERICANS WITH DISABILITIES ACT?

If you or one of your witnesses require a sign language interpreter, assistive listening device, materials in an alternate format, or other accommodations, please contact your ADA coordinator **at least four business days** in advance of the court date. Your ADA coordinator's contact information is on the back page of this brochure.

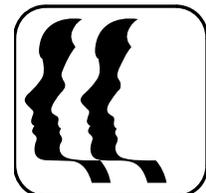
ARE YOU OR YOUR WITNESSES CONCERNED ABOUT SAFETY IN COURT?

Your local court may have metal detectors and will have law enforcement officers stationed at the courthouse. If you want a law enforcement officer in the courtroom during the trial, call the court clerk well before the trial. You may also ask to have someone walk with you to your car after the trial.

WITNESSES

DO YOU NEED WITNESSES BESIDES YOURSELF?

Witnesses are people with firsthand knowledge about important things you need to prove in your case. For example, if your case is about statements another person made to you that you believe made a binding agreement between you, anyone who heard these statements may help the judge make the decision of what that agreement may have been and whether it can be enforced. Make sure that a witness will help your case before you ask them to come to the trial. Talk to them first to find out what they know. Call them well before the trial so that they can make plans to be there on that day.



HOW DO YOU GET THE WITNESSES YOU NEED TO COME TO COURT?

You may want the statement of a witness who is important for your case, but does not want to come to court. Unless witnesses are under subpoena, they do not have to show up for court. A subpoena is an order from the court to appear at a trial. Often, witnesses need a subpoena to show their employer why they need to be gone from work. Forms for a subpoena are available in the circuit court clerk's office. Unless the witness waives the right to payment, you must pay each witness a fee of at least \$30.00 per day plus mileage at the rate of at least \$.25 per mile.

WHAT IF YOUR WITNESS CANNOT COME TO COURT?

The judge will make decisions in the case by listening to witnesses who testify under oath. The judge cannot use letters, affidavits, or other written statements instead of personal testimony unless the other party agrees.

You may be able to have your witness testify by telephone during the trial but you will need the judge's permission and would have to follow Oregon laws. You must file a special request with the court (a document usually called a "motion") and serve a copy on the other party or his/her attorney before the trial.

SHOULD CHILDREN COME TO COURT?



In almost all cases, children are not needed as witnesses at trial. You will not be able to watch your children during the trial, and they may not be allowed to remain in the courtroom. Since they can be noisy, young children especially should be left at home with a babysitter or relative. If you cannot leave your children at another location, you should have someone who can watch the child when you are in your trial.

WHAT OTHER EVIDENCE DO YOU NEED?

You may also need written evidence to prove your case. This depends on the type of case you have. If it is a contract case, you will need any written documents that support your position, such as the contract itself, if it is in writing, and letters between you and the other party. If it is a personal injury case, such as an automobile accident, you will need to bring copies of the police report and records of car repairs and medical treatment.



If you plan to show these documents to the judge, you must provide a copy to the other party. Also you should ask the judge's clerk for help "marking" the exhibits.

The judge may not allow you to submit certain items as evidence if the other party objects and the judge rules that, based on the Oregon Evidence Code, the evidence is not admissible. The Oregon Evidence Code is in the Oregon Revised Statutes at Chapters 40 to 45. (<http://www.leg.state.or.us/ors/vol1.html>)

DO YOU NEED TO FILE INFORMATION WITH THE COURT BEFORE TRIAL?

The court may request that you file a "trial memoranda" before the date of your trial. This is typically a document that sets forth the issues in your case, what evidence you have in support of your position on the issues, and relevant law. Even if the court does not require a "trial memoranda," you may file one with the clerk, but be sure to serve the other party with a copy at the same time.

AT THE TRIAL



HOW SHOULD YOU ACT AT THE TRIAL?

- Be on time. Bring all papers or exhibits that you need for your trial. You may use written notes during the trial.
- No food or drinks are allowed in the courtroom. Do not chew gum or tobacco.
- Take off hats.
- Turn off cell phones and pagers.
- Stand when the judge comes into the courtroom.
- Sit down when the judge or clerk asks you to sit.
- Be polite to everyone. Do not interrupt anyone during the trial. Stop talking when the judge talks.
- Talk only when it is your turn. When you address the judge, you should stand up.
- The judge may ask you questions. If you do not understand the question, tell the judge. Do not answer a question unless you understand what is being asked.
- If you do not know the answer to a question, say so. Don't guess.
- Take your time answering questions and explain your answer if you think it will be helpful.
- Be honest with the judge. If the judge thinks you are being dishonest about some things, he may not believe the rest of what you have to say.
- Don't repeat what's already been said.
- Be brief when you can.
- Use your own words to say what you have to say. You do not need to use legal terminology.
- Don't argue with the judge or anyone else.
- Address everyone in the courtroom formally, calling them "Ms. Jones" or "Mr. Smith," rather than using first names.
- When you speak to the judge, call him or her, "Your Honor."
- Be calm. Stick with the facts. Do not lose your temper.
- If you are not sure what to do during the trial, ask the court clerk or the judge.
- Your witnesses and people in the audience must be quiet during the trial, except when it is time for them to testify. You and they should not react to what witnesses and the judge say by talking or making faces.
- Remember, the judge cannot talk to you about your case, except when your case is being heard in the courtroom when the other party is present.

YOU MAY NOT TALK TO THE JUDGE ABOUT YOUR CASE OUTSIDE OF THE COURTROOM

The judge cannot talk to you about your case except in the presence of the other party, or with their permission.

WHAT IS THE LAYOUT OF THE COURTROOM?

The "bench" is where the judge sits. The court reporter, if present, will sit in front of the judge. The judge's clerk usually will sit at the front or to the side of the judge. There will be at least two tables in front of the bench. You will sit at one of these tables when your name is called. Only parties and attorneys may sit at the tables unless the court allows otherwise.

Your witnesses will sit in the audience section or outside the courtroom until they are needed. The place where witnesses testify is called the "witness stand." It is next to the bench. Sometimes the judge will tell you that you can testify from your seat at the table.

WHO WILL BE AT THE TRIAL?

- The judge and staff (perhaps including the court reporter).
- A deputy sheriff, if security staff has been assigned.
- The other party.
- Witnesses.
- Attorneys, if any.
- There may be a number of other people in the courtroom. They may be waiting for their own case to be heard, or they may be watching court cases.



HOW WILL YOU KNOW WHEN THE TRIAL BEGINS?



The judge or clerk will call your case. Stand and let them know you are there, then wait for further instructions.

WHAT HAPPENS AT THE TRIAL?

Opening Statement:

The judge may ask you and the other party to give an “opening statement.” This is when you tell the judge about your case, what you want, and why the judge should do what you ask.

Presenting Your Case:

- The plaintiff (the person who filed the case) goes first. Then the defendant (the person who has been complained against) goes next. You should have a written list of everything you need to prove, and how you are going to prove it by using witnesses and documents.
- If you do not have a lawyer, you will be allowed to tell the judge (“testify”) on your own what has happened, and why you should get what you asked for in the Complaint or Answer. The judge may ask you some questions. When you have finished testifying, the other side has a chance to “cross-examine” (ask) you about what you told the judge. Once the other party or their attorney has finished cross-examining you, you will have the chance to explain anything that was brought up in the cross-examination. Testify only about what you know; do not guess. If you do not know the answer, say so.
- When it is your turn to present your case, you may call your witness/es. They will be sworn in; then you may begin questioning them. You should have written down the questions you want to ask. Make your questions short and to the point. Do not argue with the witnesses. It is important that you are asking questions and not making statements. When you have asked all your questions, the witness will be cross-examined by the other side. You may be allowed to ask more questions of the witness to follow up on their answers. Ask the judge if you are allowed to ask a witness more questions.
- When the other side calls its witnesses, you will be able to question those witnesses. Ask questions; this is not another chance for you to make statements.
- Once the defendant finishes his/her presentation, the judge may let the plaintiff “rebut” or contradict testimony or evidence presented by the other side. If so, the plaintiff and/or other witnesses can re-take the stand, or offer documents into evidence.



- During the testimony, if you want the judge to consider a document or some other piece of physical evidence, you must “offer” it into evidence as an “exhibit.” You should have already given a copy to the other side before the trial started. Ask the judge’s clerk to put an evidence sticker on your document and number it. Tell the judge that you would like to “offer the exhibit into evidence” and be prepared to tell the judge why it is important for him/her to read it. The other side may object. The judge will decide whether to consider it.
- The other person may also offer exhibits. He or she should have shown them to you before trial. If you believe the exhibit is irrelevant, misleading, unreliable, or otherwise improper, tell the judge.

Closing Argument and Final Judgment:

After all the testimony has been heard, the judge may not want to hear anything else. But the judge may ask you to give a “closing argument,” which is a summary of the testimony and evidence that supports your requests to the court. If so, the other side will also be asked to give his or her view of the case.

The judge may make a ruling from the bench, or may “take the case under advisement” to think about and decide later. If the judge does not decide right away, s/he will send both sides a letter explaining his/her decision. The judge will ask one of the parties to prepare an order/judgment. If the judge asks you to do that, there are rules about what it has to look like and what it has to include. Some attorneys can also help you to prepare a judgment. See “Where Can I Find An Attorney” above, page 1.

WHAT DO YOU NEED TO PROVE AT THE TRIAL?

Usually the plaintiff (the party filing the complaint) has the burden of proving his or her case against the defendant (the party responding to the case brought against him/her). This means the plaintiff must convince the judge that s/he is entitled to the relief that s/he is asking for. On the other hand, the defendant has the burden of raising any defenses s/he may have to what the plaintiff is claiming.

Civil cases are based on “causes of action.” These are claims for wrongdoing (other than criminal conduct) for which the plaintiff seeks compensation, usually in the form of money. There are many different civil causes of action, such as claims for personal injury (e.g., physical harm due to an accident or negligent medical care), breach of contract, or a request that the court determine ownership of real property.

Every “cause of action” has different elements of proof. For example, some of the elements that must be shown to win a breach of contract case include: (a) the existence of a valid contract, (b) a meeting of the minds regarding its terms, (c) a breach [failure to perform one or more of the terms], and (d) damages. All of these must be proven by the plaintiff in order to win his/her case.

If you are the defendant in a civil case, similarly, there are defenses that can be raised on your behalf that may persuade the judge or jury to decide in your favor and against the plaintiff. However, you need to know what defenses are available for each different type of cause of action. For example, in breach of contract cases, performance may be excused due to unavoidable and unexpected circumstances.

You can go to your local law library to research what the elements of, or defenses to, a cause of action may be. Court staff cannot help you with this because it requires “legal advice” and court staff is prohibited by law from providing legal advice. It is highly recommended that you consult with an attorney to make sure that you can prove your case or your defense, and have met all the appropriate legal requirements. If you do not prove every required element of your cause(s) of action or defense(s), the judge will rule against you.

Attorneys who provide “unbundled legal services” may be able to help you prepare for this part of your case. See “Where Can I Find An Attorney” above, page 1.

RESOURCES

OREGON REVISED STATUTES: Available at your local law library and the following website:
<http://www.leg.state.or.us/ors/home.htm>

UNIFORM TRIAL COURT RULES: Available at your local law library and the following website:
<http://www.ojd.state.or.us/programs/utcr/utcrrules.htm>

LOCAL COURT SUPPLEMENTARY RULES: Check with your local court. Contact info for your local court may be found at the following website:
<http://www.ojd.state.or.us/Web/OJDPublications.nsf/SLR?OpenView&count=1000>

LOCAL COURT WEBSITES: Click the drop-down box on the left side of this web page to select the court you want to view the website for:
<http://www.ojd.state.or.us/courts/circuit/index.htm>

OREGON LAW HELP: (Free legal info for low income Oregonians): <http://www.oregonlawhelp.org>

OREGON STATE BAR: <http://www.osbar.org>

- **Lawyer Referral Service:** 800.452.7636
<http://www.osbar.org/public/ris/ris.html#referral>
- **Modest Means (low income):** 800.452.7636
<http://www.osbar.org/public/ris/ris.html#referral>
- **Military Assistance Panel:** 800.452.7636
<http://www.osbar.org/public/ris/ris.html#referral>
- **Legal Info for the Public:** General information about Oregon law including arbitration and mediation, business law, small claims, subpoenas, and more:
<http://www.osbar.org/public/legallinks.html>
- **Tel-law:** 800.452.4776
This is a collection of recorded legal information messages accessible by telephone at 503.620.3000 or toll-free in Oregon only, 800.452.4776. A touch tone phone allows direct access 24 hours a day, seven days a week. To receive a free Tel-law brochure listing the subjects available call 503.620.0222, ext. 0.

Contact Information for Your Local Court

[Click here for a listing of local
Trial Court Administrators](#)

[Click here for a listing of local
ADA Coordinators](#)