

Oregon  
Court of  
Appeals  
Report

**2011-12**

---

## **INTRODUCTION**

It has been my practice to report each year to those who follow the work of the Court of Appeals. The focus of the court's annual report varies each year. This report begins with a brief introduction, including a farewell to our esteemed colleague, Judge Ellen Rosenblum, and a welcome to our newest judge, Erika Hadlock, and then it examines the court's effort to identify and implement effective judicial administrative practices and its corollary goal of securing adequate funding to carry out its core functions.

The Court of Appeals is Oregon's intermediate appellate court. By statute, the Court of Appeals is charged with deciding nearly all the civil and criminal appeals taken from Oregon's state trial courts and nearly all the judicial reviews taken from state agencies and boards in contested cases and rule challenges. Created by statute in 1969, the court does not exercise jurisdiction under the constitution; instead, its jurisdiction is established by the legislature. Whether measured against the number of appeals taken by population or the number of appeals taken by judge, the Oregon Court of Appeals consistently ranks as one of the busiest appellate courts in the nation. Over the past decade, the Court of Appeals has received approximately 3,000 to 3,800 filings per year. More detailed information is posted on the court's web page on the Oregon Judicial Department's website at: <http://courts.oregon.gov/COA/index.page>

With respect to change, one of our accomplished judges, Ellen Rosenblum, retired from active service on the court in May 2011. Judge Rosenblum, who previously had served for many years as a judge on the Multnomah County Circuit Court, came to the court in 2005. She brought considerable experience, wisdom, collegiality, and intellect to her work as an appellate judge, and she will be greatly missed. To fill the vacancy created by her departure, we were fortunate to welcome an energetic and talented new judge to the court, Erika Hadlock, who has ably served the public for many years, including a longstanding tenure as an outstanding advocate in the Appellate Division of the Oregon Department of Justice. Judge Hadlock brings to the court a depth and richness of professional expertise that reflects her own stellar work and life experience. We warmly welcome her to our court family.

## **2011: A YEAR OF UNPRECEDENTED CHALLENGE**

For 42 years, the Court of Appeals has set and maintained a standard of judicial excellence--of principled and efficient decision-making--in service to the people of Oregon. In 2011, even as it continued that legacy, the court faced a "perfect storm" of unprecedented challenges. Those challenges included, of course, the significant budget reductions that have affected the court, the Oregon Judicial Department, and the justice

system as a whole. More fundamentally, however, the court's workload has increased in volume and complexity, while no judges have been added to the court since 1977. Meanwhile, resources have increased in agencies that influence the Court's workload, so that justice system funding is out of balance. In particular, substantial numbers of attorneys have been added to the appellate divisions of the Department of Justice and the Office of Public Defense Services for the processing of criminal, collateral criminal, and juvenile dependency appeals, which make up more than 60 percent of the court's workload.

As a consequence, those offices uniformly produce timely and sophisticated arguments in their cases, requiring the dedication of more resources by the court to the resolution of criminal and collateral criminal cases. This leaves fewer resources for the timely resolution of civil and domestic relations appeals and administrative reviews, all of which are important for Oregonians from economic and societal standpoints. Cases that once would have waited in a lawyer's office for briefing now wait on the court's docket for decision. Despite a highly productive annual output of 471 authored opinions, at the end of 2011, the court still had 366 cases under advisement. Sadly, it is not uncommon in complex civil cases for parties to have to wait for a decision for a year or longer after oral argument, which may be nearly two years from the filing of the appeal and several years from the original trial court decision.

To compound these pressures, the court considers 30 or more land use appeals per year from the Land Use Board of Appeals (LUBA) and the Land Conservation and Development Commission (LCDC). That body of work includes some of the most complex and resource-intensive cases in the Oregon judicial system, more than half of which must be completed on a legislatively directed timeline by judges and staff who often lack specialized experience in land use law. Concerns such as infrastructure capacity and urban growth boundary pressures, to name only two, aptly demonstrate the intersection of the planning process with the challenges facing today's courts in dealing with complex systems while working with antiquated structures and processes that are no longer adequate to meet those challenges. The Chief Justice recently convened a work group to examine and address those challenges. The objectives of the work group, which included stakeholders representing diverse interests in the land use arena, were to find ways to hasten the reliable finality of land use decisions, and to promote a system where delay is discouraged and local land use decisions are sufficient to withstand appeal the first time around. Among the recommendations that the work group made was that it is critical to add another three-judge panel to the Court of Appeals to improve the timeliness and efficiency of appellate decision-making across the board and, thereby, to derivatively improve the timeliness and efficiency of land use decisions.

## **WHAT WE HAVE DONE AND WHAT IS NEEDED**

The Court of Appeals has worked to modernize and improve its internal processes and case-deciding function through the statutory creation of the Appellate Commissioner's office, the use of two-judge panels, the elimination of universal *de novo* review in equity cases, and the adoption of modern business practices which allow the court to process many cases in an efficient manner with the dedication of fewer judicial resources, and to effectively monitor and assess timeliness and productivity. The Legislative Assembly has assisted the court in handling its workload by approving statutory changes needed to implement these efficiency measures. *Those improvements notwithstanding, merely to "tread water" with its existing caseload, the court needs four new judges and corresponding staff.*

Despite those best-effort measures, the court's ability to perform its essential, historical mission is being incrementally impaired. Even though for more than 90 percent of appellate litigants the Court of Appeals has the final word in their case, no new judges have been added to the Court in 35 years. A groundbreaking workload study that the National Center for State Courts completed in 2010, examined the court's current workload and how it has evolved throughout the years. The National Center's study concluded that the Oregon Court of Appeals continues to be one of the busiest and most productive appellate courts in the nation. However, by any objective measure, the court has not had enough resources to hear and decide cases in a timely fashion. In fact, the court has only about half the judges and staff of other intermediate appellate courts in the nation with similar caseloads.

## **ECONOMIC GROWTH AND WELL-BEING REQUIRE ADEQUATE APPELLATE COURT FUNDING**

Article I, section 10, of the Oregon Constitution promises Oregonians that "justice shall be administered \* \* \* completely and without delay." Unfortunately, Oregon's appellate justice system increasingly struggles to deliver on that promise. Population growth, budgetary constraints, and an increasing volume and complexity of laws has placed a burden on the court system that has become more than its resources can bear.

The challenges that the court faces affect the ability of Oregonians to get timely decisions when they seek review of business and property dispute decisions, criminal cases involving, among other things, victim's rights issues, countless agency determinations--from workers' compensation to environmental and land use regulation--or the family law and juvenile dependency decisions that go to the core of our social compact. Credible economic impact models persuasively demonstrate the measurable opportunity costs of resource-driven delays and inefficiencies in the judicial system. This

is the best way to ration scarce public resources in tough times, because it follows tried and true business models.

One of the linchpins of every free market economy is a court system that is impartial, competent, and timely. The connection between the efficient operation of the judiciary and the economic wellbeing of the community is universally accepted in the economic profession. One of the highest national judicial administration and reengineering priorities is the refinement of credible economic impact models that change the focus of court funding decisions from what it will *cost* to adequately fund the courts to what it will *save* society in economic terms if sound funding decisions are made that enable courts to meet their performance benchmarks based on accurate workload assessments.

A recent California study found that the court closures, staff layoffs, and related reductions in capacity caused by \$219 million in reductions to the Los Angeles Superior Court (the nation's largest trial court system) from 2009 through 2013 would result in 150,000 lost jobs, \$30 billion in lost economic output, and \$1.6 billion in lost state and local tax revenue. That study, along with other groundwork that has been done in other states, has helped pave the way toward the development of sound economic models that persuasively document the economic costs of failing to adequately fund the rule of law in our states. The State Justice Institute, the only federal body that provides economic support for the nation's state courts, recently tasked the National Center for State Courts with the development of the first phase of an integrated cost benefit model for criminal cases. That work is now underway, and it will set the stage for a corresponding project for civil cases. The latter project will address both the economic impacts of the courts at the case level as well as rule of law values that result from the level of trust that individuals and organizations place in the economy because of appropriate and reliable enforcement of legal rights and remedies.

The simple conclusion is that the Court of Appeals needs additional resources to effectively carry out its functions. Meeting those needs is a wise investment. Timely, accurate, and final appellate decisions are critical to the economic and social wellbeing of Oregonians. An adequately funded Court of Appeals will help facilitate a statewide economic recovery by expediting the processing of civil and land use disputes with finality, so that property owners, businesses, and individual Oregonians can prudently plan and conduct their lives and economic affairs. I am pleased to report that our partners in the Legislative Assembly have understood and responded to this message. In the recently concluded legislative session, that body approved the addition to the Court of Appeals of an additional three-judge panel as of October 2013. We are profoundly grateful for the wise investment that the legislature made in public justice by enacting HB 4026.

## CONCLUSION

Every judge and staff member of the Court of Appeals is grateful to serve the people of Oregon, and we consider it a great privilege to play a meaningful role in our public justice system. We are mindful of the challenges that the Legislative Assembly faces in balancing critical interests as it paves the way to Oregon's future in upcoming legislative sessions. Today, the court faces new challenges, perhaps more daunting than any in our history. But challenge begets the opportunity for greater service. Through this report, as in past years, I have outlined for you the ways that we continue to embrace that opportunity.

One final, more personal note: As many of you know, this will be my final annual report on behalf of the Oregon Court of Appeals. Effective April 1, 2012, Judge Rick Haselton will take the reins as the Chief Judge of the court. The court, its partners, and the people of the State of Oregon will be well served by his leadership. It has been my honor and privilege to serve alongside him and the other members of the court as Chief Judge since 2004. I take this opportunity to thank everyone in the Oregon Judicial Department and throughout the state who have supported me as Chief Judge and who I know will continue to support the mission of the Oregon Court of Appeals.

David V. Brewer  
Chief Judge  
Oregon Court of Appeals  
March 12, 2012