

INFORMATION ON FILING A PETITION FOR JUDICIAL REVIEW

(Miscellaneous Agency)

In response to your request, we have enclosed information on how to file a petition for judicial review 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). **Under ORS 9.320, at the appellate court level, a corporation must be represented by an attorney who is an active member of the Oregon State Bar. *Oregon Peaceworks Green, PAC v. Secretary of State, 311 Or 267 (1991).*** We strongly urge you to consider use of an attorney to help you file your petition for judicial review as well. 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.

Judicial reviews of decisions made by most of the state agencies within Oregon are guided by ORS Chapter 183. Judicial reviews of decisions made by some agencies are guided by other statutes. Most agency orders contain a notice of judicial review rights, including the applicable statutes. ORAP 4.05 to 4.40 apply to Court of Appeals review of administrative agency cases in general.

If you wish to proceed without an attorney, you may wish to access the ORS or ORAP online at courts.oregon.gov. From there, choose "Materials and Resources" then "Court Rules" and choose either the ORS or the ORAP. The ORS and ORAP are also available in law libraries and some public libraries. Or you may send a written request for a copy of the ORAP that includes your name and address, along with a check for \$13.00 for an unbound version, or \$26.00 for a bound version, to:

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

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 and help you

understand the rules, they cannot provide legal advice. In other words, they will not substitute in any way for a lawyer's assistance.

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 agency 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 7.30 for rules concerning motions. ORAP 7.30 lists the motions that toll the time for filing the next event. Failure to file a response to a motion usually results in the motion being granted. The court will usually issue a decision on a motion in the form of a written order.

WHERE TO FILE

To request judicial review of an agency decision, you must file an original petition for judicial review 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

A petition for judicial review from most agency orders must be filed within 30 days of the date the order was mailed to you, some are different. Most agency orders contain a notice of judicial review rights, including the time within which a petition for judicial review must be filed. **Unless a petition for judicial review 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. Some statutes require service to be accomplished by certified or registered mail.

HOW TO FILE

1. File an original petition for judicial review with the Court of Appeals. You should attach to the petition for judicial review a copy of the agency decision that you wish to have reviewed.

2. You must pay a \$212.00 filing fee. See ORS 21.010. Cases originating from the Board of Parole and Post-Prison Supervision, and the Psychiatric Security Review Board do not require a filing fee. Failure to pay the filing fee can result in dismissal of your judicial review (ORAP 1.20(4)). However, you may be eligible to receive a waiver (elimination) of the fee, or you may be eligible to defer (delay) payment of the fee. To have the court determine whether you may be entitled to such waiver or deferral, you must complete the enclosed Application for Waiver or Deferral of Fees, and the Declaration for Waiver or Deferral of Fees (if applicable), and send them back to the Appellate Court Administrator. If the court defers the filing fee, you still owe it. If it is not paid by the time the appeal is complete, the unpaid filing fee will become a judgment against you. See ORS 21.605(1)(c).
3. You must complete a Certificate of Filing that indicates the date that you filed your petition, and the method that you used to file your petition.
4. You must serve copies of the petition and all attachments that you file with the Court of Appeals, to all other parties (or to their lawyers) to the case, no matter how many there are via certified or registered mail (ORS 183.482(2)). See ORAP 1.35(2). However, you do NOT need to serve the Declaration for Waiver or Deferral of Fees or any documents pertaining to government assistance such as food stamps, Social Security Income, Oregon Health Plan eligibility, Temporary Assistance to Needy Families, etc. In all agency cases, you must serve the agency, the Attorney General, and any other parties listed on the agency decision. The document(s) being filed must also include a certificate (or proof) of service, that identifies everybody you have served. A sample of the certificate of service is enclosed for your use.

WHAT HAPPENS NEXT?

1. The record is prepared: After you file and serve the petition for judicial review, the agency has 30 days in which to prepare and file the agency record (the transcript of the testimony of the hearing, copies of documents that were received into evidence, etc.). You have 15 days to review that record and seek to correct it; when the record is an accurate reflection of the agency record, the record will be considered "settled." See ORAP 4.22.
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. Sample briefs are available at: "courts.oregon.gov/OJD/OSCA/acs/records/SampleBriefs.page?" You are required to file an "opening brief" within 49 days of the date that the record 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 agency 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 judicial review, 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 agency 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 agency 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 agency was wrong. You ordinarily may not include in your brief a statement about anything that has happened after the date of the agency order that you are appealing.

The "answering briefs" (briefs from the opposing party(ies) 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 the 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. By mail, 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. You also have 35 days from the date of the decision to file and serve a petition for review with the Oregon Supreme Court under ORAP 9.05. This 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 and to seek reinstatement of the appeal.

The Oregon Supreme Court does not have to hear the case. If a timely petition for review has been filed by any party, the appellate judgment in the case cannot issue from the Records Section until the Oregon Supreme Court decides to allow or deny review. If the Oregon Supreme Court denies your petition for review, or the petition for review filed by the other side, 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 agency of the appellate court's decision and transmits the case back to the agency.

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 PETITION FOR JUDICIAL REVIEW

CAPTION

On line 1, fill in the name of the petitioner(s) (usually just your name or the name of your business). The "Respondent" is the party or parties that will be opposing your petition. Fill in the name(s) of the respondent(s) on line 2.

AGENCY CASE NUMBER

Fill in the agency case number on the line provided. You will find this number on the first page of the agency decision.

SECTION 1(a)

Fill in the name of the agency who issued the decision being challenged.

SECTION 1(b)

Fill in the date of the agency decision for which you are seeking judicial review.

SECTION 2

Fill in your name and address; and your email address (if applicable). Fill in the name and address for any respondents.

SECTION 3

Attach a copy of the agency decision for which you are seeking judicial review.

SECTION 4

Read section four before signing the petition.

SECTION 5

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

Sign the petition, and insert the date that you signed it. You must file the original document, with your original signature, with the Appellate Court Administrator.

INSTRUCTIONS FOR COMPLETING CERTIFICATE OF FILING

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

INSTRUCTIONS FOR COMPLETING CERTIFICATE OF SERVICE

- Fill in the date that you served copies of the petition, and all other related documents, to the other parties.
- Although the names and addresses for some of the parties have been provided, you must indicate that you have served them with a copy of the petition by checking the appropriate boxes. You will need to fill in the name and address for any additional parties (if any).
- Mark the method of service that you used to serve the parties.

Sign the certificate of filing and certificate of service; insert the date that you signed it. You must file the original documents, with your original signature, with the Appellate Court Administrator. 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 – Name of petitioner(s)]

Petitioner

v.

[LINE 2]

Respondent(s).

Agency Case No. _____.

PETITION FOR JUDICIAL REVIEW

1.

Petitioner seeks judicial review of the final order of the _____ in this case, dated _____.

1(b)

1(a) Name of agency

2.

The parties to this review are:

PETITIONER'S NAME, ADDRESS, AND EMAIL ADDRESS (PETITIONER)

RESPONDENT(S) NAME AND ADDRESS

3.

Attached to this petition is a copy of the agency order for which judicial review is sought.

4.

Petitioner was a party to the administrative proceeding that resulted in the order for which review is sought.

5.

DESIGNATION OF RECORD

Petitioner is not willing to stipulate that the agency record may be shortened.

Petitioner is willing to stipulate that the agency record may be shortened and designates only the following portions to be included in the record:

DATE: _____ **SIGNATURE:** _____

CERTIFICATE OF FILING

I certify that on _____[DATE], I filed the original of the petition for judicial review with the Appellate Court Administrator at the following address:

**ATTN: Records Section
Appellate 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 States Postal Service, certified or registered mail, return receipt requested.
- Hand delivery
- Other (specify): _____

CERTIFICATE OF SERVICE

I certify that on _____[DATE], I served a true (exact) copy of the petition for judicial review to the following parties at the addresses set forth below:

INDICATE THAT ALL PARTIES BELOW WERE SERVED BY CHECKING THE APPROPRIATE BOXES BELOW:

- ATTORNEY GENERAL**, Office of the Solicitor General, 1162 Court Street NE, _____
Salem, Oregon, 97301
- AGENCY/BOARD** NAME AND ADDRESS: _____

- RESPONDENT:** NAME AND ADDRESS _____

- OTHER PARTY:** NAME AND ADDRESS _____

by the following method of service:

INDICATE METHOD OF SERVICE BY CHECKING THE APPROPRIATE BOXES BELOW:

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

DATE: _____ **SIGNATURE:** _____

IN THE COURT OF APPEALS OF THE STATE OF OREGON

_____ ,)	Case No. _____
)	
v.)	<input type="checkbox"/> Appellant/Petitioner
)	<input type="checkbox"/> Respondent
_____ .)	APPLICATION FOR WAIVER OR DEFERRAL OF FEES
)	

I am asking for waiver or deferral of fees in this case because I am unable to pay all or part of the fees. The following information is complete and accurate to the best of my knowledge. I understand that I am required to provide documentation verifying this information. I understand that failure to do so could result in my request being denied.

1. I am applying for **WAIVER** (A fee “waiver” means that you are not required to pay some or all of your fees because the court has determined that, based on your income and other relevant factors, you are unable to pay.) **OR**
- DEFERRAL** (A fee “deferral” means that the court has determined that you must pay the court fees, but that you can pay the fees owed over a specified period of time.)

of the following fees (check all that apply):

- | | |
|----------------------------------------------------|---------------------------------------------------------|
| <input type="checkbox"/> Appellant's Filing Fee(s) | <input type="checkbox"/> Respondent's Appearance Fee(s) |
| <input type="checkbox"/> Motion Fee(s) - Filing | <input type="checkbox"/> Motion Fee(s) – Response |

2. I declare that (check one of the boxes below):

- I am receiving assistance from at least one of the following programs:

Food Stamps	Oregon Health Plan with Limited Drug
Oregon Health Plan Standard	Supplemental Security Income (SSI)
Oregon Health Plan Plus	Temporary Assistance to Needy Families (TANF)

If you checked the above box, you must show proof that you are receiving assistance from the program. You do NOT need to fill out a Declaration for Waiver or Deferral of Fees unless you are enrolled in the Oregon Health Plan’s Qualified Medicare Beneficiary (QMB) program or Citizen Alien-Waived Emergency Assistance (CAWEM) program. If you are enrolled in QMB or CAWEM, you must complete and file the declaration with this application.

- Even though I am NOT receiving assistance from any of the above programs, I am still unable to pay the fees.

If you checked the above box, you must complete and file a Declaration for Waiver or Deferral of Fees with this application. The declaration is designed to prove to the court that you do not have sufficient financial resources to pay the fees. If the court defers fees, I understand that:

IN THE COURT OF APPEALS OF THE STATE OF OREGON

_____,)
v.)
_____)

Case No. _____

- Appellant/Petitioner
Respondent

DECLARATION FOR WAIVER OR DEFERRAL OF FEES

(TO BE COMPLETED BY APPLICANT)

ACCESS TO THIS DOCUMENT IS RESTRICTED PURSUANT TO THE COURT'S POLICY TO PROTECT THE PERSONAL PRIVACY INTERESTS OF PARTIES

1. PERSONAL

Full Name of Applicant
Residence Address
Mailing Address (if different)
Telephone Number *SSN ODL/ID Marital Status

*I am providing my Social Security number on a voluntary basis. I understand that I cannot be compelled to provide it or be denied consideration solely for failure to provide it.

Names, Relationships, and ages of legal dependants living in household:

Table with 4 columns: Name/Relationship, Age, Name/Relationship, Age

2. EMPLOYMENT AND INCOME

Currently Employed Not Currently Employed How long since last employment?
Employer Name
Employer Address Work Phone
Occupation Length of Employment Amount of Last Paycheck
Hourly Wage Hours Per Week Monthly Income: Gross Net

Spouse's Employment

Currently Employed Not Currently Employed How long since last employment?
Employer Name
Employer Address Work Phone
Occupation Length of Employment Amount of Last Paycheck
Hourly Wage Hours Per Week Monthly Income: Gross Net

Other income for you, spouse, dependants, or household members (for example: Social Security, unemployment, retirement, public assistance, child support, workers' compensation, disability, tribal benefits, etc.):

Table with 4 columns: Source of Income (describe), Amount, How long received?, How often received?

Other household members who help pay your living expenses:

Relationship	Amount	Payment for what (describe)?
_____	\$ _____	_____
_____	\$ _____	_____

3. MONEY ON HAND / IN BANK OWNED BY YOU AND YOUR SPOUSE

Checking Account Number _____	Bank/Credit Union _____	Cash \$ _____	Balance \$ _____
Savings Account Number _____	Bank/Credit Union _____	Balance \$ _____	Balance \$ _____
Other Account Number _____	Institution _____	Balance \$ _____	Balance \$ _____

4. MOTOR VEHICLES OWNED BY YOU AND YOUR SPOUSE

Year, Make, and Model	Value	Amount Owing	Payments made to:
_____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	_____

5. REAL ESTATE OWNED BY YOU AND YOUR SPOUSE

Address (include city and state)	Year Purchased	Purchase Price	Value	Amount Owing	Payments made to:
_____	_____	\$ _____	\$ _____	\$ _____	_____
_____	_____	\$ _____	\$ _____	\$ _____	_____

6. ALL OTHER PROPERTY OR ASSETS (example: stocks, bonds, trailers, ATVs, RVs, boats, guns, jewelry, livestock, etc.):

Description	Value	Description	Value
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

7. MONEY OWED TO YOU OR YOUR SPOUSE BY OTHERS (example: tax refunds, judgments, trust funds, etc.):

Name of Debtor Owing You Money	Amount Owed	Date Expected
_____	\$ _____	_____
_____	\$ _____	_____

8. MONTHLY LIVING EXPENSES

Rent/Mortgage Payment \$ _____	Vehicle Payment \$ _____
Credit Card Payment \$ _____	Vehicle Insurance \$ _____
Child Support Payment \$ _____	Transportation Costs \$ _____
Court Fines/Payments \$ _____	Doctors/Medical Costs \$ _____
Food \$ _____	Other _____ \$ _____
Household Utilities (gas, electric, water, sewer, garbage, phone, etc.) \$ _____	

9. LIQUIDATION OF ASSETS

If you are unable to sell or liquidate your assets, please use this space to explain why: _____

I hereby declare that the above statement is true to the best of my knowledge and belief. I understand that it is made for use as evidence in court and is subject to penalty for perjury.

Date

Signature of Applicant

Name of Applicant (printed or typed)