



A Step-By-Step Guide to Oregon Civil Lawsuits

The US legal system is immeasurably vast and complex. Legislatures across our country add tens of thousands of statutes to our various legal codes at federal, state, and local levels every year. Additionally, the actions taken and decisions made by judiciaries in nearly every state and at the federal level are strongly influenced in many circumstances by case law, whereby courts consider precedents set in past judgments on similar cases when making decisions on current cases. It is next to impossible to even begin to try to keep up with all of these laws, which is why it is much more useful to understand the foundational structures within which our judiciary operates.

This, too, is no easy task, as there is a plethora of different courts of law throughout the United States, with the federal government having its own court system and each state also operating its own unique court structure. Generally speaking, however, the legal systems throughout the US can be broken down into two key categories: civil and criminal.

Criminal law is based almost entirely on statutes and is geared towards applying punishment for acts deemed harmful to society, thus criminal cases are always initiated and prosecuted by the government. Civil law, on the other hand, provides a mechanism to address and resolve disputes between private individuals or entities, and is usually geared towards two potential ends: forcing one party to fulfill its legal obligations, or obtaining compensation for harm or damage committed by one of the parties.

The civil arena is much broader since any individual or entity can file a civil lawsuit any time they feel another party failed to fulfill a legal obligation to them. And while a criminal conviction can only be achieved if there is evidence "beyond a reasonable doubt" that the defendant committed the crime, civil cases usually require only a "preponderance of evidence" that the defendant did indeed have a legal obligation to the plaintiff and that they failed to fulfill that obligation in order to rule against a defendant.

To put it simply, civil lawsuits are the instrument that allows regular people and businesses to take action when they have a dispute or grievance with another person or business. Perhaps you were the victim of a breach of contract. Maybe you were injured as a result of someone's negligence. Maybe you simply disagree with your spouse over how your property should be divided in your divorce or you disagree with your neighbor over where his property ends and yours begins. Whatever the case may be, you can usually pursue civil litigation in order to resolve the dispute, correct any wrongdoing, and potentially compensate you for losses resulting from that wrong depending on the circumstances.

But how does one actually go about doing this? The average person has not been to law school and does not know precisely how the civil court system operates. We hear about lawsuits and people getting sued all the time, but few people actually know what to expect from such a situation. Additionally, the process can vary drastically from state to state. Thus, we've put



together this step-by-step guide—specific to the state of Oregon, where our firm operates—to help you better understand how the process generally plays out. By better understanding what you can expect from Oregon civil lawsuits, you can proceed with confidence and give yourself the best chance to protect your rights and achieve your goals as either the plaintiff or defendant.

Please keep in mind this guide is not intended as legal advice for your unique circumstances, and your proper course of action may vary based on the size and nature of your claim. For example, if your Oregon civil claim is under \$10,000, it may be advantageous to file your claims in Small Claims Court, which involves different rules and procedures than claims brought in Circuit Court. Hence, no matter the size or severity of the claim, you should almost always rely on the guidance and advocacy of a skilled civil litigation attorney like those at Clarke Griffin, LLC in order to ensure you remain compliant throughout the process. If you are considering filing a lawsuit or you have had a lawsuit filed against you, please do not hesitate to give us a call at (503) 543-4800 in Scappoose to set up an initial consultation and let us aggressively pursue your goals and best interests.

Steps in an Oregon Civil Lawsuit

Step 1 - Complaint Filed

Every civil lawsuit will always begin with one party filing a complaint against another. In Oregon, one party will file a complaint with their local court clerk and pay the required filing fees. The person filing the complaint is known as the “plaintiff,” while the opposing person or entity is known as the “defendant.” Once the complaint is filed and the fee is paid, it will be given a case number.

Step 2 - Summons Served on Defendant

Defendants have a legal right to be notified that a civil complaint has been filed against them, and it is the responsibility of the plaintiff to do so. There are a number of ways a plaintiff can “serve” the defendant with the complaint, including hiring a professional process server or having the Sheriff to serve the complaint. In all cases, the plaintiff must file proof with the court that the defendant was properly notified.

Step 3 - Defendant Response

The defendant has 30 days from the date he or she was served to file a response with the court. There are a number of different responses that could result. The defendant may admit fault and agree to pay the claim, in which case the lawsuit will conclude. Alternately, the defendant can deny the claim and demand a trial. Defendants may also choose to submit a counterclaim against the plaintiff alleging that he or she was in fact at fault. If the defendant does not file an official response to the complaint in court within 30 calendar days, the case may proceed to a default judgment in which the court will automatically rule in favor of the plaintiff.



Step 4 - Trial Set

Depending on the complexity of the case and which Oregon court the lawsuit is filed in, soon after the defendant files a response—assuming they deny the claim—a hearing date will be set. Generally speaking, the judge will hold a status conference with both parties in order to discuss the pertinent details of the case, develop a rough timeline for the case, and potentially look for opportunities to settle out of court. In Oregon, the parties must agree on the manner in which the trial will be carried out. One party will usually demand a jury trial which may occur with either 6 or twelve jurors. Less often, and depending on the circumstances of the case, the trial may proceed as a bench trial, meaning the case will be solely heard and determined by the judge without the involvement of a jury. During this conference, the parties will also settle on any stipulations regarding the trial procedure, the pre-trial evidence discovery process, settlement negotiations, and much more.

In some cases, depending on the jurisdiction and the nature of the dispute, some form of Alternative Dispute Resolution such as arbitration or mediation may be mandated by the judge in order to attempt to have the parties resolve the dispute themselves without the court's input. Those measures may result in a resolution or the case may proceed to trial. Throughout this stage, each party's counsel will work to set the stage in a manner most beneficial for their clients. There are numerous issues that must be addressed, and numerous different ways in which the case could proceed from this point forward, and it is vital that you rely on the guidance of an attorney who understands not only which options are available for you, but how best and when to pursue them.

Step 5 - Discovery and Pre-Trial Motions

Discovery is the pre-trial legal process—governed in Oregon by the Oregon Rules of Civil Procedure—that allows either party in a civil lawsuit to request and obtain information relevant to the case. Either party's attorney could demand documents, depositions of witnesses, written admissions of the facts surrounding the case, and much more. Discovery is intended to place both parties on even ground for the trial, and both parties are legally required to comply with these requests.

Additionally, there is a seemingly endless number of potential pre-trial motions that could be filed by each party's attorneys as well. These are various types of legal requests for the judge to rule on specific issues relevant to the case. As with all aspects of a civil lawsuit, the manner in which your attorney proceeds and the actual motions he or she elects to pursue will vary depending on the unique circumstances of your case. For example, if there is no dispute over the actual facts surrounding the case, one party could file a Motion for Summary Judgment which, if granted, would send the case straight to judgment where the judge will give a ruling based on the undisputed facts of the case. These motions can also include requests for information and depositions that will aid them in the discovery process, motions to dismiss the case, and much more.



Step 6 - Trial

Next is the actual hearing to determine the outcome of the case. Both parties will present their evidence to either the judge or jury who will then deliberate on the facts of the case. As previously mentioned, the burden of proof in most civil cases is that there is a “preponderance of evidence,” meaning the evidence in favor of one ruling is more convincing or probable than the evidence against that ruling. However, depending on the nature of the civil claim, the burden of proof could be held to a significantly higher standard. For example, some cases with claims of fraud and intentional misrepresentation may employ “clear and convincing” evidence as the burden of proof. This standard is not as rigorous as the “beyond reasonable doubt” standard utilized in serious criminal trials, but it is more rigorous than a preponderance of evidence. Clear and convincing evidence means that the evidence in favor of a particular ruling is substantially more likely to be true than not, with the key word being “substantially.” Whichever burden of proof is used, the jury or the judge will hear all the evidence and decide whether or not it meets that burden of proof during deliberations.

Step 7 - Judgment

After deliberations are completed, the judge or jury will enter a judgment in the case. The type of judgment may vary based on the circumstances of the lawsuit, but if the plaintiff wins the judgment then the defendant will generally be required to either fulfill some legal duty or obligation, or pay the amount of the claim. In most civil lawsuits, the party who wins the judgment—known as the “prevailing party”—will also usually be granted prevailing party fees and their costs and disbursements. This means the party who loses the case will be required to pay the various legal fees, courts costs, etc. for the prevailing party.

Keep in mind that a “judgment” in a civil lawsuit is really just a piece of paper stating what the losing party is required to do next, and the actual enforcement of the judgment can be an incredibly challenging and complex process.

Step 8 - Post-Trial Motions and Appeals

There are a number of different remedies and actions that could potentially be pursued by either party following the judgment, such as requesting a new trial. As with pre-trial motions, there are a number of different requests either party can bring to the judge after the judgment has been entered in hopes of improving on the outcome of the case in some specific way. Also, in civil cases either party can request an appeal of the judgment (though not in Oregon small claims cases), in which case the appeal will be heard by the Oregon Appellate Court located in Salem.

Step 9 - Post-Judgment

Ideally, all parties will comply with the terms of the judgment, which is usually recorded against any real property owned by the losing party in the county in which the judgment was entered. However, we do not live in a perfect world and it is common for losing parties to defy the terms of the judgment. Chances are, more legal action will be required to actually enforce the



judgment. For example, the prevailing party may pursue collections in order to collect that court-ordered compensation. This could come in several forms, such as a writ of garnishment whereby the debt will be collected from the debtor's wages, or a writ of execution whereby the debt is collected from the seizure of the debtor's personal property. However, it is often incredibly difficult to discover whether the losing party has the assets, income, bank accounts, etc. necessary to pursue and achieve collection on a judgment. Enforcement of a judgment can be immensely costly—particularly if it drags out over a long period of time—which is why it is so essential to utilize an attorney who can leverage the law in a manner which will efficiently and effectively allow you to achieve the best available resolution.

We hope you have found this step-by-step guide to Oregon civil lawsuits to be helpful. Please keep in mind, these steps are generalized and your specific case may not proceed exactly as stated above. If you have questions which we have not answered in this guide, or if you are in need of representation in an Oregon civil lawsuit, please contact the Law Offices of Clarke Griffin, LLC today at (503) 543-4800 in Scappoose. We look forward to hearing from you!