

MEMORANDUM

Date: November 18, 2025

From: Jim Nass

Subject: Waiver of Undertakings on Appeal from Justice Courts in Civil Cases

Issue: Whether, on appeal from a justice court in a civil case, either the justice court or circuit court should have the authority to waive or reduce the amount of:

1. an undertaking for costs, or
2. an undertaking to stay of enforcement of a judgment, including a judgment of eviction in an FED case,
3. or both, for good cause, including indigence.

Background:

House Bill 2460 (2025), at Sections 25-29 (excluding 28a), addresses undertakings for costs and supersedeas undertakings on appeal from justice courts to the circuit court in civil cases. Section 25(2) requires the appellant to file an undertaking for the costs and disbursements that the respondent will incur on appeal (typically, the circuit court filing fee). Section 25(3) provides that, as to a defendant appealing a judgment against the defendant who wishes to stay enforcement of the judgment appeal (a “supersedeas undertaking), the defendant must file an undertaking for the amount of the judgment.

Neither the law before HB 2460 nor HB 2460 itself authorizes waiver (or reduction) of undertakings for costs or supersedeas undertakings. By contrast, if a party appeals from the circuit court to the Court of Appeals in a civil case, circuit courts have authority to waive (or reduce) such undertakings for good cause including indigence. See ORS 19.310 and 19.340, relating to waiver (or reduction) of undertakings; and ORS 19.360, relating to appellate court review of circuit court decisions on undertaking and stay issues. See also ORS 19.340, applicable to undertakings in appeals taken by “an executor, administrator, trustee or other person acting on behalf of another” and judgments involving perishable property. Those statutes are set forth in an appendix to this memorandum.¹

Discussion:

¹ ORS 19.340 could be applicable to justice courts because justice courts have jurisdiction of cases for the recovery of personal property, see HB 2460 at Section (2)(b), and, presumably, an executor, administrator or trustee could file a civil action in a circuit court. Two other statutes in ORS chapter 19 address supersedeas undertakings in product liability cases relating to tobacco use (ORS 19.3112 and stays in domestic relations cases (ORS 19.355). Justice courts do not have jurisdiction in such cases; therefore, those statutes would not apply to justice courts.

Because many litigants in justice (and municipal) courts are self-represented and not familiar with the laws governing procedures in those courts, one of the goals of the Work Group is to simplify the law governing those procedures. One way to do that is to adopt procedures for justice (and municipal) courts like existing procedures in circuit court cases, unless there is a good reason to adopt different provisions. Because ORS 19.310, 19.340, and 19.360 address similar issues on appeal from circuit court, one solution to the issue is to adapt those statutes applicable on appeal from a justice court to the circuit court.

When the committee of the Work Group met today to discuss this topic, committee members observed that, unlike appeals from circuit courts to the Court of Appeals, which can take many months to resolve, appeals from justice courts to circuit courts are typically resolved in a matter of days or weeks. This is particularly true in FED cases that are subject to statutory deadlines: ORS 105.137(6) requires a trial for an eviction based on nonpayment of rent “no earlier than 15 days, and no later than 30 days” and for any other claim “as soon as practicable and no later than 15 days”. If the law provided for waiver or reduction of undertakings on appeal from justice courts, and the opportunity to contest a requested waiver or reduction, and circuit court review of such decisions, the issue of whether the undertaking should be waived or reduced might come before the circuit court at about the same time the case would be heard on its merits. A committee member suggested that, at a minimum, any request to waive or reduce an undertaking could be made by the circuit court in the first instance, the same as, under HB 2460, Section 10a(1)(c), a request to waive or defer the circuit court filing fee is decided by the circuit court in the first instance.

Committee members also noted that no one had identified the absence of authority to waive or defer undertakings on appeal from justice courts in civil cases as a problem in need of a solution. This is particularly true in FED cases, because HB 2460, at Section 25(5), governing supersedeas undertakings in FED cases and requiring payment of rent into court, is new and there is no track record of whether those provisions will unjustly deny tenants relief pending appeal to circuit court.

However, Section 25(5) is comparable to ORS 105.137(7), applicable to eviction cases in circuit court and which provides: “If the matter is not tried within the period described in subsection (6) of this section, and the delay in trial is not attributable to the landlord, the court shall order the defendant to pay rent that is accruing into court, provided the court finds after hearing that entry of such an order is just and equitable.” It could be argued that, if a circuit court must make an affirmative finding that an order requiring payment of rent into court is “just and equitable,” a tenant on appeal from a justice court of a judgment of eviction likewise should have the opportunity to argue that requiring payment of rent into court pending the de novo appeal is not “just and equitable.”

If the Work Group decides that either the justice court or the circuit court should have the authority to waive or defer undertakings on appeal from justice courts and to

adopt provisions comparable to provisions applicable to appeals from circuit court, there is an issue regarding the timing of the filing of a request to waive or reduce the amount of an undertaking. Respecting appeals from circuit court, ORS 19.310 and 19.360 impose a 14-day period to file either a stipulated motion to waive (or reduce) an undertaking or to file a motion for review by the circuit court of the justice court's decision regarding an undertaking or stay. HB 2460, Section 25(2), requires the appellant to file an undertaking for costs in the first instance within five days of the filing of notice of appeal. Should the time periods be consistent across the board?

Also, generally, the modern practice is to impose time limits in increments of seven days, because that minimizes the possibility that a deadline will fall on either a Saturday or Sunday when courts are not open for business. Also, five days is a short time period after deciding to appeal to file an undertaking for costs or a motion for waiver or reduction of the undertaking.

Perhaps one solution would be to amend HB 24260, Section 25(2), to provide a period of seven days to file an undertaking for costs or supersedeas undertaking, and to provide a comparable seven-day period for a party to file a stipulated motion for waiver or reduction of an undertaking. And, if the Work Group decides that the justice court should rule on a motion to waive or reduce an undertaking in the first instance but that the circuit court should have the authority to review the justice court's decision, the party should be required to file the request for review within seven days of the justice court's decision.

Options

If the Work Group decides to adopt the statutes presently governing appeals in civil cases decided by a circuit court to appeals in civil cases decided by a justice court, including circuit court review of the justice court's decision in the first instance, version 1 below would be one way of doing so. If the Work Group decides that the circuit court should decide a motion to waive or reduce an undertaking in the first instance, Version 2 below would be one way of doing so.

Version 1

Section 1. Waiver, reduction or limitation of undertaking. (1) By written stipulation of the parties, an undertaking on appeal may be waived, reduced or limited. The stipulation must be filed with the justice court clerk within five [seven?] days after the filing of the notice of appeal. Unless disapproved or modified by the justice court, the stipulation has the effect specified by the terms of the stipulation.

(2) The justice court may waive, reduce or limit an undertaking on appeal upon a showing of good cause, including indigence, and on such terms as are just and

equitable. The appellant must file a motion to waive, reduce or limit the undertaking within five [seven?] days after filing the notice of appeal. The respondent shall have five [seven?] days after the filing of the motion to file an answer to the motion. The justice court for good cause may extend the time to file a motion to waive, reduce or limit an undertaking or to file an answer to the motion.

Section 2. Waiver of supersedeas undertaking; sale of perishables. (1) The justice court, in its discretion, may stay a judgment without requiring a supersedeas undertaking, or reduce the amount of the supersedeas undertaking required of the appellant, if the appellant is an executor, administrator, trustee or other person acting on behalf of another.

(2) If a judgment that has been stayed requires the sale of perishable property, or if perishable property has been seized to satisfy or secure a judgment that has been stayed, the justice court may order that perishable property be sold and the proceeds of the sale deposited or invested until issuance of the circuit court judgment terminating the appeal.

Section 3. Circuit court review of justice court orders relating to undertakings and stays. (1) Any party aggrieved by the justice court's final order relating to an undertaking on appeal, the justice court's grant or denial of a stay or the terms and conditions imposed by the justice court on the granting of a stay may seek review of the justice court's decision by filing a motion in the circuit court to which the appeal is made. The motion must be filed within five [seven?] days after the date of the justice court's order. During the five-day [seven-day?] period after the date of the justice court's order, the judgment shall automatically be stayed unless the justice court orders otherwise. The justice court may impose terms or conditions on the stay or take such other action as may be necessary to prevent prejudice to the parties.

(2) The circuit court may review the decision of the justice court under the provisions of this section at any time after the filing of the notice of appeal.

(3) The circuit court shall review the decision de novo upon the record made before the trial court unless:

(a) There is additional relevant information relating to the period of time following the decision of the justice court that the circuit court determines to be important to review of the decision; or

(b) The party submitting new information establishes that there was good cause for not submitting the information to the justice court.

(4) On review of a justice court's decision relating to a request for a stay pending appeal, the circuit may remand the matter to the justice court for reconsideration, may vacate a stay granted by the justice court, may grant a stay, and may impose or modify terms and conditions on a stay. Upon receipt of a request for a stay pending appeal made to the circuit court in the first instance, the circuit court may remand the matter to the justice court for consideration in the first instance, may grant or deny a stay, and may impose terms and conditions on a stay issued by the circuit court.

Version 2

Section 1. Waiver, reduction or limitation of undertaking. (1) By written stipulation of the parties, an undertaking on appeal may be waived, reduced or limited. The appellant must file the stipulation with the justice court clerk within five [seven?] days after the filing of the notice of appeal.

(2) The appellant may request waiver, reduction or limitation of an undertaking on appeal upon a showing of good cause, including indigence. The appellant must file a motion for waiver, reduction or limitation with the justice court no later than five [seven?] days after filing the notice of appeal. The respondent shall have five [seven?] days after the filing of the motion to file an answer to the motion. The justice court for good cause may extend the time to file a motion to waive, reduce or limit an undertaking or to file an answer to the motion.

(3) The justice court must transmit a written stipulation filed subsection (1) of this section or a motion for waiver, reduction or limitation of an undertaking and any answer to the motion to the circuit court along with the justice court record or, if the justice court has already transmitted the record to the circuit court, promptly after parties have filed the stipulation or a motion and any answer to the motion.

(4) The circuit court shall decide a motion to waive, reduce or limit an undertaking de novo upon the record made before the justice court unless:

(a) There is additional relevant information relating to the period of time following the decision of the justice court that the circuit court determines to be important to review of the decision; or

(b) The party submitting new information establishes that there was good cause for not submitting the information to the justice court.

(5)(a) Respecting a stipulated motion under subsection (1) of this section, unless disapproved or modified by the circuit court, the stipulation has the effect specified by the terms of the stipulation.

(b) Respecting a motion for waiver, reduction, or limitation of an undertaking under subsection (2) of this section, the circuit court may waive, reduce or limit an undertaking on such terms as are just and equitable. The circuit court may vacate a stay granted by the justice court, grant a stay subject to terms and conditions as are just and equitable, or deny a stay.

Section 2. Waiver of supersedeas undertaking; sale of perishables. (1) The circuit court, in its discretion, may stay a judgment without requiring a supersedeas undertaking, or reduce the amount of the supersedeas undertaking required of the appellant, if the appellant is an executor, administrator, trustee or other person acting on behalf of another.

(2) If a judgment that has been stayed requires the sale of perishable property, or if perishable property has been seized to satisfy or secure a judgment that has been stayed, the circuit court may order that perishable property be sold and the proceeds of the sale deposited or invested until issuance of the circuit court judgment terminating the appeal.

Appendix

19.310 Waiver, reduction or limitation of undertaking. (1) By written stipulation of the parties, an undertaking on appeal may be waived, reduced or limited. The stipulation must be filed with the trial court administrator within 14 days after the filing of the notice of appeal. Unless disapproved or modified by the trial court, the stipulation has the effect specified by the terms of the stipulation.

(2) The trial court may waive, reduce or limit an undertaking on appeal upon a showing of good cause, including indigence, and on such terms as are just and equitable.

19.340 Waiver of supersedeas undertaking; sale of perishables. (1) The trial court, in its discretion, may stay a judgment without requiring a supersedeas undertaking, or reduce the amount of the supersedeas undertaking required of the appellant, if the appellant is an executor, administrator, trustee or other person acting on behalf of another.

(2) If a judgment that has been stayed requires the sale of perishable property, or if perishable property has been seized to satisfy or secure a judgment that has been stayed, the trial court may order that perishable property be sold and the proceeds of the sale deposited or invested until issuance of the appellate judgment terminating the appeal

19.360 Appellate review of trial court orders relating to undertakings and stays. (1) Any party aggrieved by the trial court's final order relating to an undertaking on appeal, the trial court's grant or denial of a stay or the terms and conditions imposed by the trial court on the granting of a stay may seek review of the trial court's decision by filing a motion in the appellate court to which the appeal is made. The motion must be filed within 14 days after the entry of the trial court's order. During the 14-day period after the entry of the trial court's order, the judgment shall automatically be stayed unless the trial court orders otherwise. The trial court may impose terms or conditions on the stay or take such other action as may be necessary to prevent prejudice to the parties.

(2) The appellate court may review the decision of the trial court under the provisions of this section at any time after the filing of the notice of appeal. Notwithstanding ORS 19.415 (3), the appellate court shall review the decision de novo upon the record.

(3) On de novo review under subsection (2) of this section, the record shall be restricted to the record made before the trial court unless:

(a) There is additional relevant information relating to the period of time following the decision of the trial court that the appellate court determines to be important to review of the decision; or

(b) The party submitting new information establishes that there was good cause for not submitting the information to the trial court.

(4) On review of a trial court's decision relating to a request for a stay pending appeal, an appellate court may remand the matter to the trial court for reconsideration, may vacate a stay granted by the trial court, may grant a stay, and may impose or modify terms and conditions on a stay. Upon receipt of a request for a stay pending appeal made to the appellate court in the first instance, the appellate court may remand the matter to the trial court for consideration in the first instance, may grant or deny a stay, and may impose terms and conditions on a stay issued by the appellate court.