

MEMORANDUM

Date: October 27, 2025

From: Jim Nass

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

Issue: Whether, on appeal in a justice court civil case, the justice court should have the authority to waive or reduce the amount of an undertaking for costs, or an undertaking in support of a stay of enforcement of a judgment (“supersedeas undertaking”), 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 likely 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, 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. ORS 19.310 and 19.340, relating to waiver (or reduction) of undertakings; see also ORS 19.360, relating to appellate court review of circuit court decisions on undertaking and stay issues:¹

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.

¹ ORS 19.312 addresses supersedeas undertakings in product liability cases relating to tobacco use and ORS 19.355 addresses stays in domestic relations cases. Justice courts do not have jurisdiction in such cases; therefore, those statutes would not apply to justice courts.

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.^[2]

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.

² Assuming executors, administrators, trustees, or other persons acting on behalf of another may file civil actions in a justice court, subsection (1) could come into play on appeal to circuit court in such cases. Likewise, because justice courts have jurisdiction for the recovery of personal property, subsection (2) also could be applicable on appeal in those cases.

(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.

Discussion:

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:

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 [14?] 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.

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.

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 days after the entry of the justice court's order. During the five-day period after the entry 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. The circuit 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 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.

One issue that arises from the proposed adaption of ORS 19.310 and 19.360 to appeals from justice court to circuit court is the number of days that a party has to file 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. ORS 10.310 and 19.360 provide a 14-day period, but HB 2460, Section 25(2), requires that an undertaking for costs in the first instance be filed within five days of entry of judgment. 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.

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, and for the proposed statutes above to provide a comparable seven-day period for a party to file a stipulated motion for waiver or reduction of an undertaking or to seek circuit court review of a justice court order regarding a matter of an undertaking or stay.