

The seal of the Judicial Department of the State of Oregon is circular, featuring a central scale of justice. The words "JUDICIAL DEPARTMENT" are written along the top inner edge, and "STATE OF OREGON" along the bottom inner edge.

# **BACKGROUND INFORMATION FOR STUDENTS ATTENDING COURT OF APPEALS ORAL ARGUMENTS**

## **INTRODUCTION**

You will be seeing an actual court session of the Oregon Court of Appeals. The lawyers have previously submitted written arguments, called "briefs." You will see the lawyers orally argue on behalf of their clients. We have provided case summaries to inform you about each case being argued. This material tells you about how the courts fit into our system of government and how the Oregon Court of Appeals operates.

## **DEMOCRACY AND THE JUDICIAL BRANCH OF GOVERNMENT**

### **◆ Sources and organization of government**

At oral argument, you will see democracy in action as contemplated by the founders of the United States and Oregon Constitutions. The United States Constitution creates the federal government, and the Oregon Constitution creates our state government. The powers of the federal government are limited to those set out in the United States Constitution. State governments have all remaining powers not denied to them by the federal or their state constitutions. The Constitutions create a representative form of government that authorizes that laws be made, enforced, and interpreted. Those three functions--making laws, enforcing laws, and interpreting laws--are the primary roles of the three branches of government--legislative, executive, and judicial.

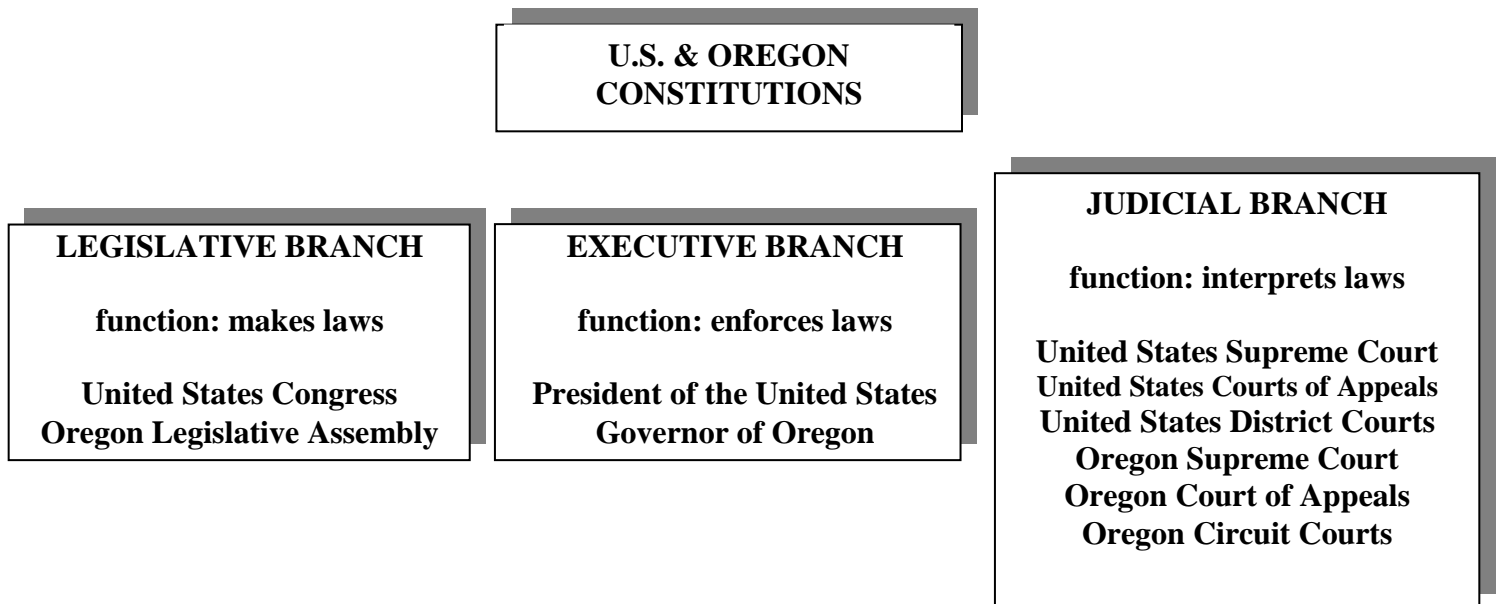
◆ **Why does our government have three branches?**

Two fundamental important concepts were created by the founders in both the United States and Oregon Constitutions:

- (1) **Separation of powers** of the government into different branches of government; and
- (2) A system of **checks and balances** on the exercise of power by each branch of government, through the functions of the other two branches.

The three-branch systems of both the federal government and our state government accomplish the goals of separation of powers and checks and balances.

Those branches are (1) the legislative branch (the branch that makes the law)--the United States Congress or the Oregon Legislative Assembly; (2) the executive branch (the branch that enforces the law)--the President or the Governor; and (3) the judicial branch (the branch that interprets and applies the law to individual circumstances)--the federal and state courts.



◆ **What do courts do? What kinds of courts are there?**

The Constitutions contemplate that people's affairs are to be governed by rules of law, instead of by the whim or arbitrariness of a ruler or rulers as found in some other forms of government. To carry out that idea, the courts interpret laws as part of the process of deciding individual cases. There are two parallel systems of courts in the United States: federal courts and state courts. Within each system, there are two general divisions of courts: trial courts and appellate courts. The Oregon Court of Appeals is a state appellate court. The attached chart shows the relationship among Oregon courts.

◆ **What is the difference between trial courts and appellate courts?**

Trial courts are the courts that you usually see depicted on TV. In trial courts, decisions of fact are made by a "trier of fact." Often, the trier of fact is a jury, but sometimes it is a judge. Also in trial courts, rules of law are applied by judges to the facts to reach a decision. Appellate courts, on the other hand, generally cannot change the factual decisions of the trial courts. Instead, appellate courts decide whether decisions of law made by trial courts were correct.

An example illustrates the differences between the two kinds of courts: Sam drives his car through an intersection. A police officer pulls Sam over, and gives him a ticket for driving through the intersection while the light was yellow. In the trial court, Sam's lawyer argues (1) the light was green, not yellow, when Sam drove through the intersection, and (2) the law does not make it illegal to drive through an intersection when a light is yellow. The jury decides that the light was yellow--that is a factual finding. The

judge decides that the law does make it illegal to drive through an intersection when a light is yellow--that is a legal conclusion. Sam loses, and he appeals. Sam cannot argue to the appellate court that the light was not yellow; the appellate court usually has to accept what the jury decided. Sam can argue, though, that the judge in the trial court was wrong about the law. Those legal issues are the sorts of things that you will hear about at oral argument. Because only legal issues, not factual issues, are decided by appellate courts, there are no juries in appellate courts such as the Court of Appeals.

◆ **Do all appeals come from trial courts?**

In addition to hearing cases originally decided in trial courts, appellate courts often hear cases originally decided by "administrative agencies." Administrative agencies are bodies created by the legislature. Each agency deals with a narrow subject matter area, such as workers' compensation (paying injured workers to compensate for their injuries) and land use (deciding how to use different kinds of land). Agencies typically make, enforce, and interpret "rules" or "regulations," instead of laws enacted by the legislature.

◆ **How do courts interpret the laws?**

There are four sources of law that an appellate court may consider in deciding whether a trial court or administrative agency's legal ruling was correct: (1) the words of the Constitutions; (2) the words of "statutes," laws enacted by Congress or the legislature; (3) rules adopted by administrative agencies; and (4) cases or "common law"

previously decided by courts. Because we are governed by rules of law, how a similar case has been decided in the past often will be used to decide how a case before us should be decided today.

## **THE OREGON COURT OF APPEALS**

The Oregon Court of Appeals hears appeals from all state trial courts and administrative bodies. We are one of the busiest appellate courts in the United States. In 2007, more than 3,300 cases were filed in our court. We have more cases filed per judge than any other state except Louisiana.

The ten judges on the Court of Appeals are elected to six-year terms in statewide elections. Each judge must be a United States citizen, an Oregon resident for at least three years, and a lawyer admitted to practice in Oregon.

The Court of Appeals is organized into three departments or "panels" of three judges. The tenth judge is the Chief Judge, who is the administrative head of the court. The Chief Judge also sometimes fills in on a panel if one of its regular judges cannot hear one or more cases. On each panel, one of the judges is the "presiding judge." The presiding judge runs the oral argument proceedings and the judges' meetings before and after oral argument. Each of the three judges on the panel has an equal vote in deciding cases.

## PROCEEDINGS BEFORE THE COURT OF APPEALS

### ◆ **What is oral argument?**

The Court of Appeals hears approximately 2,000 oral arguments each year, with each panel of judges hearing one-third of the cases. Before a case is argued, the judges on the panel read the written briefs submitted by the lawyers for each party. In the briefs, the lawyers explain the case and make legal arguments to the court. The panel meets before oral arguments to discuss the cases. Typically, a panel will hear about 10 cases in one day. As you will see, the purposes of the oral arguments are to allow the lawyers to discuss the case with the judges who will be deciding it and to allow the judges to ask the lawyers questions about the case. The lawyers have a limited time to present their arguments, but the judges may extend that time if they have additional questions.

In the past, almost all oral arguments were heard by the court in Salem. However, in 1997, the court began a program to hear oral arguments in other locations throughout the state. Most of the hearings have been in local high schools. The purpose of the program is to allow Oregon citizens, in particular students, an opportunity to better understand Oregon's court system, as well as to allow local lawyers to present their appeals in a more convenient location.

### ◆ **What happens to a case after oral argument?**

After oral arguments--usually immediately after--the judges again discuss the cases and take a tentative vote on each one. In some cases, the judges vote to "affirm" (or agree with) the decision of the trial court or agency without a written explanation. We call this kind of a decision "AWOP" (Affirmed Without Opinion). If the case is not

affirmed without opinion, the presiding judge assigns the case to a judge on the panel. That judge then prepares a draft opinion, which explains the facts, applicable law, and how that law applies to resolve the case. Judges often rely on the assistance of lawyers who work for the court--staff attorneys and law clerks--to help them prepare draft opinions. The draft opinion circulates to the other judges on the panel, the Chief Judge, and the department's staff attorneys and law clerks.

Each panel meets in a conference several times each month, where the judges discuss draft opinions. If at least two of the judges agree on an opinion, it will be issued. A judge who does not agree with the majority may write a separate opinion "concurring" (agreeing with the result, but discussing different reasons for that result) or "dissenting" (disagreeing with the result). The court issues about 400 to 600 written opinions per year. Sometimes, opinions are sent to the "full court" of ten judges. Those cases typically present more complicated or more significant legal issues that justify the attention of all the judges.

After opinions are issued to the parties, they may ask the Court of Appeals to reconsider its decision or analysis. Parties may also ask the Oregon Supreme Court to review the decision of the Court of Appeals. The Supreme Court agrees to review approximately 75 Court of Appeals decisions each year.

## **BACKGROUND INFORMATION FOR JUDGE RICK T. HASELTON**

Rick Haselton has served on the Oregon Court of Appeals since March 1994. An Oregon native, Judge Haselton was born in Albany and graduated from West Albany High School in 1972. He later graduated from Stanford University, with a bachelor's degree in political science, in 1976 and graduated from the Yale Law School in 1979.

After law school, Judge Haselton returned to Oregon, where he served as law clerk to a judge on the United States Court of Appeals for the Ninth Circuit. Between 1980 and 1994, Judge Haselton was an attorney in private law practice, specializing in complex civil cases and appeals. In 1994, Governor Barbara Roberts appointed Judge Haselton to the Court of Appeals, and he was elected to a six-year term in November 1994 and re-elected in 2000 and 2006.

Judge Haselton lives in Portland with his wife and 18-year-old daughter. What he loves best about the Court of Appeals is the people--the other judges and staff--and the opportunity to give something back to the people of Oregon. Judge Haselton's outside interests include American history, baseball trivia, and gardening.

## **BACKGROUND INFORMATION FOR JUDGE REX ARMSTRONG**

Judge Armstrong's parents, Ed and Alice Armstrong, moved to Oregon from the Midwest in 1948. Judge Armstrong was born in Salem, Oregon, two years later. His father served as chief of staff to three Oregon governors during the 1950's, Douglas McKay, Paul Patterson, and Elmo Smith, and later served as an executive with Pacific Supply, which was a Pacific Northwest farmers cooperative. His mother received a doctorate in educational psychology in 1978 and went on to establish the Institute for Managerial and Professional Women in Portland that same year.

Judge Armstrong had a number of jobs while a student in high school and college. He served as an intern for Senator Mark Hatfield in Washington, D.C., and worked for a year as the Eastern Oregon field director for Senator Hatfield's 1972 re-election campaign. In the latter position, he drove more than 70,000 miles throughout Eastern Oregon over a 10-month period. He also worked as a truck driver for several Oregon trucking companies and as a choker setter on a logging tower for the Weyerhaeuser Company.

Judge Armstrong received his undergraduate degree from the University of Pennsylvania and his law degree from the University of Oregon. After graduating from law school, he served as a law clerk for Justice Hans Linde on the Oregon Supreme Court. He then entered private law practice in Portland, where he focused on civil litigation and appeals. He was elected to an open seat on the Oregon Court of Appeals in 1994 and has served on the court since then.

Judge Armstrong is married to Leslie Roberts, who is a Multnomah County Circuit Court Judge. Leslie's father is the late State Senator Frank Roberts; her stepmother is former Governor Barbara Roberts; her former stepmother is former State Senator and Oregon Supreme Court Justice Betty Roberts; and her sister is former State Labor Commissioner Mary Wendy Roberts.

Judge Armstrong and his wife have ten children, eight of whom they adopted in China.

## **BACKGROUND INFORMATION FOR JUDGE ELLEN F. ROSENBLUM**

Ellen Rosenblum is a judge on the Oregon Court of Appeals, having been appointed by Governor Ted Kulongoski in May 2005. She was previously a Multnomah County Circuit Court Judge for sixteen years, from 1989 until 2005. Prior to becoming a judge, she was in private practice in Eugene for five years after her graduation from the University of Oregon Law School in 1975, followed by eight years as a federal prosecutor (Assistant United States Attorney for the District of Oregon) in Eugene and Portland.

In Oregon, Judge Rosenblum's professional involvement includes serving for nine years as the chair of the Oregon Judicial Conference Judicial Conduct Committee, which issues ethics advisory opinions to judges and judicial candidates pursuant to the Oregon Code of Judicial Conduct. She has co-authored a chapter of the *Ethical Oregon Lawyer* on judicial ethics. She recently chaired a joint project of the Multnomah courts and Multnomah Bar Association to improve jury service in Multnomah County. She chaired the Oregon Citizens Justice Conference 2000. She is past president of the Owen M. Panner American Inn of Court and the United States District Court of Oregon Historical Society.

Judge Rosenblum initiated the *Courthouse Connections* program of Oregon Women Lawyers, the *Tell It To The Judge* Law Week program of the Multnomah County Bar, the *Famous Federal Cases Series* of the U. S. District Court Historical Society and, along with the Columbia River Girl Scouts Council, the *Girl Scouts Beyond Bars* program in Oregon. She is a regular columnist for the Oregon Women Lawyers quarterly

publication, and she is a frequent speaker on subjects of lawyer and judicial ethics, as well as motion and trial practice.

At the national level, Judge Rosenblum is the National Judicial College liaison to the Advisory Committee of the Joint Commission to Revise the ABA Model Code of Judicial Conduct. This group is conducting the first major review of the Model Code since 1990. In July 2005, she completed six years of service on the Board of Trustees of the National Judicial College. In August 2005, she completed a three year term as Secretary of the American Bar Association. She has been a member of the House of Delegates of the ABA since 1988. She has served on the ABA's Coalition for Justice, on its Commission on Racial and Ethnic Diversity in the Profession and on the ABA President's Advisory Council on Diversity. As a Commissioner, she was co-chair of the first Minority Judicial Clerkship Program. She is a Life Fellow of the American Bar Foundation and currently serves as Chair-Elect of the Fellows.

Judge Rosenblum has received recognition from the Oregon Circuit Judges Association for her contributions to the judiciary in the area of judicial ethics, from Oregon Women Lawyers (Justice Betty Roberts Award for promoting women in the profession), from the Oregon State Bar (President's Public Service Award), from Lewis and Clark Law School (Andrea Swanner Redding Mentoring Award and Honorary Alumna Award), from her alma mater, the University of Oregon Law School (Meritorious Service Award), and from the Multnomah Bar Association (Award of Merit).

Judge Rosenblum is married to Richard Meeker. They have two college-age children, Cate and Will.