

IN THE SUPREME COURT OF THE STATE OF OREGON
IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of the Adoption of) Chief Justice Order 15-013
Amendments to the Oregon Rules of) Chief Judge Order 15-01
Appellate Procedure, Relating to)
Mandatory eFiling for Active Members)
of the Oregon State Bar)

**ORDER ADOPTING TEMPORARY AMENDMENT AND
NEW OREGON APPELLATE RULES OF PROCEDURE,
RELATING TO MANDATORY ELECTRONIC FILING
BY ACTIVE MEMBERS OF THE OREGON STATE BAR**

Pursuant to ORAP 1.10(2), the Supreme Court and Court of Appeals may, from time to time, adopt temporary rules and temporary amendments to the Oregon Rules of Appellate Procedure. The Supreme Court and Court of Appeals by this order:

- Adopt amendments to ORAP 16.15, 16.30, and 16.55; and
- Adopt new ORAP 16.60.

The amendments to ORAP 16.15, 16.30, and 16.55 are set out in Appendix A with additions in **{braces, boldface, and underscored}**, and deletions in [~~brackets, italics, and strikeout~~]. New ORAP 16.60 is set out in **{braces, boldface, and underscored}**.

This order does not amend any of the following provisions of ORAP Chapter 16: ORAP 16.03; ORAP 16.05; ORAP 16.10; ORAP 16.20; ORAP 16.25; ORAP 16.40; ORAP 16.45; and ORAP 16.50. Those rules are set out in their entirety in Appendix A, to assist the Bar in preparing for the transition to mandatory eFiling.

This order is effective on June 1, 2015.

DATED this 6th day of April, 2015.


Thomas A. Balmer, Chief Justice

DATED this 6th day of April, 2015.


Rick T. Haselton, Chief Judge

APPENDIX A

16. FILING {AND SERVICE }BY ELECTRONIC MEANS

Rule 16.03 APPLICABILITY

These rules apply to electronic filing in the Oregon Court of Appeals and the Oregon Supreme Court. At this time, only attorneys who are members of the Oregon State Bar and are authorized to practice law in Oregon are eligible to file documents electronically.

Rule 16.05 DEFINITIONS

(1) "Conventional filing" means the filing of a paper document with an Oregon appellate court in accordance with the Oregon Rules of Appellate Procedure.

(2) "Document" means a brief, petition, notice, motion, response, application, affidavit or declaration, or any other writing that, by law, may be filed with an appellate court, including any exhibit or attachment referred to in that writing

(3) "Electronic filing" or "eFiling" means the process whereby a user of the eFiling system transmits a document directly from the user's computer to the electronic filing system to file that document with the appellate court.

(4) "Electronic filing system" or "eFiling system" means the system provided by the Oregon Judicial Department for the electronic filing of a document in the appellate courts via the internet. The system may be accessed at <http://tinyurl.com/eFilepage> (<http://courts.oregon.gov/OJD/OnlineServices/eFile/index.page?>>).

(5) "Electronic payment system" means the system provided by the Oregon Judicial Department for paying filing fees and associated charges electronically in the appellate court.

(6) An "eFiler" means a person registered with the eFiling system who submits a document for electronic filing with the appellate court.

(7) "Electronic service" or "eService" means the process for a user of the eFiling system to accomplish service via the electronic mail function of the appellate court eFiling system.

(8) "Hyperlink" means a navigational link in the electronic version of a document to another section of the same document or to another electronic document accessible via the internet.

(9) "Initiating document" means any document that initiates a case, including but not limited to a notice of appeal; a petition for review; a petition for judicial review; a petition for a writ of mandamus, habeas corpus or *quo warranto*; and a recommendation for discipline from the Oregon State Bar or the Commission on Judicial Fitness and Disability.

(10) "PDF" means Portable Document Format, an electronic file format.

(11) "Username" means the identifying term assigned to an eFiler by the court, used to access the appellate court eFiling system.

Rule 16.10 eFILERS

(1) Authorized eFilers

(a) Any member of the Oregon State Bar who is authorized to practice law may register to become an eFiler.

(b) To become an eFiler, an attorney must complete a registration form to request a username and must complete a training program, either online or in person, regarding the appellate court eFiling system. Links to the registration form and to the online training program are available at <http://tinyurl.com/eFilepage> (<http://courts.oregon.gov/OJD/OnlineServices/eFile/index.page?>>). An attorney who has been assigned a username, has created a password, and has completed training may eFile documents with the appellate courts.

(2) Conditions of Electronic Filing

(a) To access the eFiling system, each eFiler agrees to and shall

(i) review the technical requirements for electronic filing at <http://tinyurl.com/eFileFAQpage> (<http://courts.oregon.gov/OJD/OnlineServices/eFile/electronicFilingFAQs.page?>>);^b

- (ii) register for access to the eFiling system;
- (iii) comply with the electronic filing terms and conditions when using the eFiling system;
- (iv) furnish required information for case processing;
- (v) advise the Oregon Judicial Department Enterprise Technology Services Division of any change in the eFiler's e-mail address.¹

(b) An eFiler's username and password may be used only by the attorney to whom the username and password were issued or by an employee of that attorney's law firm or office or by another person authorized by that attorney to use the username and password.

(c) The appellate court may suspend the electronic filing privileges of an eFiler if the court becomes aware of misuse of the eFiling system or of the eFiler's username and password.

¹ Use the form located on the Judicial Department's website, at the following address: <http://courts.oregon.gov/OJD/OnlineServices/eFile/pages/techsupport.aspx>.

An eFiler should allow two business days for processing the update. Once the update is made, it becomes effectively immediately. This obligation is independent from the obligation of Oregon lawyers to notify the Oregon State Bar when the lawyer's e-mail address changes.

Rule 16.15

FORMAT OF DOCUMENTS TO BE FILED ELECTRONICALLY

(1) Any document filed via the eFiling system must be in a Portable Document Format (PDF) or Portable Document Format/A (PDF/A) that is compatible with the eFiling system requirements and that does not exceed 25 megabytes. An eFiler should break down a document that exceeds the size limit into as few smaller separate documents as possible, which the filer may upload as supporting documents under ORAP 16.15(5).¹ The PDF document shall allow text searching and shall allow copying and pasting text into another document.

(2) A submitted document, when viewed in electronic format and when printed, shall comply, to the extent practicable, with the formatting requirements of any

applicable Oregon Rule of Appellate Procedure. Except as provided in ORAP 16.40, a document submitted for electronic filing need not contain a physical signature.

(3) An eFiler who submits a document that does not comply with an applicable Oregon Rule of Appellate Procedure will receive from the court an acknowledgement of the electronic filing and a notice of the deficiency or deficiencies to be corrected.²

(4) The court may require that an eFiler submit, in the manner and time specified by the court, an electronic version of a document in its original electronic format.

(5) Except as provided in subsection (1) and paragraphs (5)(a) through (c) of this rule, to the extent practicable, an electronic filing must be submitted as a unified single PDF file, rather than as separate eFiled documents or as a principal eFiled document with additional supporting documents attached through the eFiling system.³

(a) A memorandum of law accompanying a petition in a mandamus, habeas corpus, or quo warranto proceeding in the Supreme Court under ORAP 11.05 or ORAP 11.20 must be submitted as a supporting document to the eFiled petition attached through the eFiling system.

(b) For an electronic filing containing an attachment that is confidential or otherwise exempt from disclosure, the eFiler must eFile the attachment separately from the principal document, not as a supporting document attached through the eFiling system. For the principal document, the eFiler must include a comment that the related eFiling is a confidential attachment to the principal document. For the eFiled attachment, the eFiler must select the document name "Notice to Court Confidential Attachment."

(c) For an electronically filed motion seeking approval to file another document, including an application to appear *amicus curiae* with an accompanying brief, where the eFiler intends to submit the brief or other document for filing at the same time, the brief or other document must be electronically filed separately from the motion seeking approval or application to appear *amicus curiae*, rather than being submitted as a supporting document attached to the motion. For each electronic filing transaction under this paragraph, the eFiler must include the following comments:

(i) For the motion seeking approval or application to appear *amicus curiae*, a comment that the eFiler is submitting the brief or other document through a separate eFiling transaction; and

(ii) For the brief or other document, a comment that the electronic filing transaction relates to the earlier electronic filing transaction that submitted the motion or application to appear *amicus curiae*.

{(6) An eFiled document may not contain an embedded audio or video file.

(7) Unless otherwise provided by these rules or directed by the court, an eFiler shall not submit to the court paper copies of an eFiled document.

¹ See <<http://tinyurl.com/eFileFAQpage>> (<<http://courts.oregon.gov/OJD/OnlineServices/eFile/electronicFilingFAQs.page?>>) for more information about the technical requirements of eFiling.

² See ORAP 1.20.

³ Examples of content that should be included as part of a unified single PDF file include: (1) notice of appeal, judgment being appealed, and certificate of service; (2) petition for judicial review, agency order as to which review is sought, and certificate of service; (3) petition for reconsideration, underlying decision as to which reconsideration is sought, and certificate of service; (4) petition for review, Court of Appeals decision as to which review is sought, and certificate of service; (5) motion, affidavit or declaration (if any) and certificate of service; (6) Supreme Court mandamus or habeas corpus petition, copy of order or written decision, and certificate of service; (7) Supreme Court memorandum in support of a mandamus or habeas corpus petition, excerpt of record, and certificate of service.

Rule 16.20 FILING FEES AND eFILING CHARGES

(1) The appellate courts may impose a transaction charge for using the eFiling system, as prescribed by order of the Chief Justice.

(2) The appellate courts may collect a document recovery charge. The document recovery charge shall be at the rate prescribed by Chief Justice Order, multiplied by the number of copies required for a particular document. The number of copies, if any, varies based on the type of document that is eFiled.¹

(3) An eFiler shall pay any required filing fees or eFiling charges at the time of the electronic filing, by using the electronic payment system, unless otherwise directed by the court. Charges for electronic filing may be recovered in the manner provided by ORAP 13.05.

(4) If an eFiler seeks to waive or defer filing fees, the eFiler shall apply for a waiver or deferral of filing fees by eFiling an application to waive or defer filing fees at the time of filing a document electronically.

(5) If the court rejects an eFiled document, the court may, upon request, refund any fees paid.

¹ A link to a chart outlining the number of printed copies required for each eFiled document is available at <http://tinyurl.com/eFileFAQpage> (<http://courts.oregon.gov/OJD/OnlineServices/eFile/electronicFilingFAQs.page?>>).

Rule 16.25

ELECTRONIC FILING AND ELECTRONIC FILING DEADLINES

(1) A filer may use the eFiling system at any time, except when the system is temporarily unavailable.¹ The filing deadline for any document filed electronically is 11:59:59 p.m. in the time zone in which the court is located on the date by which the document must be filed.

(2) The submission of a document electronically by the eFiler and acceptance of the document by the court accomplishes electronic filing. When accepted for filing, the electronic document constitutes the court's official record of the document.

(3) (a) The court considers a document received when the eFiling system receives the document. The eFiling system will send an email that includes the date and time of receipt to the eFiler's e-mail address, and to any other e-mail address provided by the eFiler, to confirm that the eFiling system received the document.

(b) When the court accepts the document for filing, the eFiling system will affix to the document the time of day, the day of the month, the month, and the year that the eFiling system received the document. The date and time of filing entered in the register relate back to the date and time that the eFiling system received the document. The eFiling system will send an email that includes the date and time of acceptance to the eFiler's e-mail address and to any other email address provided by the eFiler. If the document was electronically served by the eFiling system pursuant to ORAP 16.45, the date of service will also relate back to the date that the eFiling system received the document.

(4) If the eFiling system is temporarily unavailable due to a system malfunction or if an error in the transmission of the document or other technical problem

prevents the eFiling system from receiving the document, the court may, upon satisfactory proof, permit the filing date of the document to relate back to the date that the eFiler first attempted to file the document electronically. A party must show satisfactory proof by filing and serving with the document as to which the party seeks relation back an accompanying letter explaining the circumstances, together with any supporting documentation. Problems with the eFiler's equipment, the eFiler's hardware or software, or other problems within the eFiler's control generally will not excuse an untimely filing.

(5) Documents Conventionally Filed: The court may digitize, scan, or otherwise reproduce a document that is filed conventionally into an electronic record, document, or image. The court subsequently may destroy a conventionally filed document in accordance with the protocols established by the State Court Administrator under ORS 8.125(11).

¹ The eFiling system will be temporarily unavailable due to regularly scheduled maintenance and may be temporarily unavailable due to an eFiling system malfunction. The regularly scheduled maintenance hours are listed at <http://tinyurl.com/eFileFAQpage> (<http://courts.oregon.gov/OJD/OnlineServices/eFile/electronicFilingFAQs.page?>>).

See subsection (4) of this rule for seeking relief from an untimely filing due to an eFiling system malfunction.

Rule 16.30

{CONVENTIONAL}[SPECIAL] FILING [~~AND SUBMISSION~~] REQUIREMENTS

(1) **{The following documents must be conventionally filed:}**

{(a)} A document filed under seal, including a motion requesting that a simultaneously filed document be filed under seal or a document with an attachment that is sealed by statute or court order~~[, must be filed conventionally]~~.

{(b)}~~(2)~~ An ~~[eFiler shall file conventionally any]~~ oversized demonstrative exhibit or oversized part of an appendix or excerpt of record~~}. **Such a document must be filed** }~~ within three business days of eFiling **{the document to which the oversized document relates}**. An eFiler may note, in the "comments" section of the eFiling screen, that an oversized appendix or excerpt of record will be filed conventionally.

{(c) An opinion of a trial panel of the Disciplinary Board filed with the State Court Administrator under Bar Rule of Procedure 10.1.

(2) An eFiler who is not a lawyer of record for a party in a case must conventionally file any document in any case that is confidential by law or court order.

(a) The conventional filing requirement in this subsection applies to a lawyer for a person or entity appearing as amicus curiae.

(b) The Administrator is authorized to develop a means of electronic transmission for the filing of a notice of appointment of counsel in a confidential case, for the purpose of documenting the lawyer of record on the case.

(3) {The following documents may be conventionally filed:}*[For all documents, unless otherwise provided by these rules or directed by the court, an eFiler shall not submit to the court paper copies of an eFiled document.]*

{(a) A notice of appeal, petition for judicial review, cross-petition for judicial review, or petition under original Supreme Court or Court of Appeals jurisdiction may be either conventionally filed or eFiled.¹

(b) A request or motion for waiver of the mandatory eFiling requirement, as set out in ORAP 16.60(2). If the request is approved or the motion granted, then the approval or order filed in a case under ORAP 16.60(2)(c) or (d), and any document subject to that approval or order may be conventionally filed.

[(4) An eFiled document may not contain an embedded audio or video file.]

¹ORS 19.260(1) provides that the filing of a notice of appeal may be accomplished by mail; ORS 19.260(4) provides that, except as otherwise provided by law, subsection (1) applies to petitions for judicial review, cross-petitions for judicial review, and petitions under original jurisdiction of the Supreme Court or Court of Appeals.

Rule 16.40 ELECTRONIC SIGNATURES

(1) The username and password required to submit a document to the eFiling system constitute the signature of the eFiler for purposes of these rules and for any other purpose for which a signature is required.

(2) (a) In addition to information required by statute or rule to be included in the document, an electronically filed document must include a signature block that includes the printed name of the eFiler and an indication that the printed name is intended to substitute for the eFiler's signature. The attorney's bar number and an indication of the party that the attorney represents must appear as part of or in addition to the signature block.

Example: s/Attorney Name
Attorney Name
Oregon State Bar No. _____
Attorney for _____.

(b) The Administrator is authorized to provide notice on the Judicial Department's website¹ that eFilers may not include signature blocks generated by certain programs that are incompatible with the appellate electronic court systems.

(3) When a document is filed electronically in which an opposing party joins, that all such parties join in the document must be shown either by:

(a) submitting a scanned document containing the signatures of all parties joining in the document;

(b) including a recitation in the document that all such parties consent or stipulate to the document; or

(c) identifying in the document the signatures that are required and submitting each such party's written confirmation no later than three business days after the court's acceptance of the electronic filing.

(4) A party electronically filing a document, such as a declaration, that must be signed by a person other than the eFiler, shall include a scanned image of the signature page showing the person's signature.

¹ <http://courts.oregon.gov/OJD/OnlineServices/eFile/Pages/index.aspx>.

Rule 16.45
ELECTRONIC SERVICE

(1) Registration as an eFiler with the eFiling system constitutes consent, within the meaning of ORCP 9 G,¹ to receive service via the electronic mail function of the eFiling system.

(2) (a) A party electronically filing a document, other than an initiating document, with an appellate court may accomplish service of that document on any other party's attorney, if that attorney is a registered eFiler, by using the electronic service function of the eFiling system. The eFiling system will generate an e-mail to the attorney to be eServed that includes a link to the document that was electronically filed. To access the electronically filed document, the attorney who has been eServed must log in to the eFiling system.

(b) Notwithstanding ORCP 9 G, electronic service is effective under this rule when the eFiler has received a confirmation e-mail stating that the eFiled document has been received by the eFiling system.

(3) A party electronically filing a document with the court must accomplish service as to parties who do not qualify for eService under subsection (2)(a) of this rule via the conventional manner as provided by the applicable statutes and by the Oregon Rules of Appellate Procedure, which may include service via electronic mail as provided by ORCP 9 G. Parties who do not qualify for eService include parties represented by attorneys who are not registered eFilers and parties who are self-represented. Parties who electronically file initiating documents must accomplish service conventionally.

(4) All electronically filed documents must be accompanied by a proof of service under ORAP 1.35(2)(d). The proof of service must certify service on all parties regardless of the means by which service was accomplished, including eService.

(5) If an eFiled document is not electronically served by the eFiling system because of an error in the transmission of the document or other technical problem experienced by the eFiler, the court may, upon satisfactory proof, permit the service date of the document to relate back to the date that the eFiler first attempted to serve the document electronically. A party must show satisfactory proof by filing and serving an accompanying letter explaining the circumstances, together with any supporting documentation.

¹ See generally ORCP 9 G, cross-referenced in ORCP 9 B, made applicable to the appellate courts by ORS 19.500.

Rule 16.50
HYPERLINKS AND BOOKMARKS IN eFILED BRIEFS

(1) An eFiled document may contain one or more hyperlinks to other parts of the same document or hyperlinks to a location outside of the document that contains a source document for a citation.

(a) When a party eFiles a brief or other memorandum that is accompanied by excerpts of record or attachments, the party is encouraged to hyperlink citations to the relevant portions of the excerpts or attachments.

(b) The functioning of a hyperlink reference is not guaranteed. The appellate courts neither endorse nor accept responsibility for any product, organization, or content at any hyperlinked site.

(c) A hyperlink to cited authority does not replace standard citation format. The complete citation must be included within the text of the document. Neither a hyperlink, nor any site to which it refers, shall be considered part of the record. A hyperlink is simply a convenient mechanism for accessing material cited in an eFiled document.

(2) When a party eFiles a brief, the party is encouraged to electronically bookmark the sections of the brief, excerpt of record, and any appendix using PDF document creation software. The caption of a bookmark should be concise. The sections of the brief that should be bookmarked include the discussion on each assignment of error or question presented on review, or the response to any assignment of error or presented question. The sections of the excerpt of record or appendix that should be bookmarked include the judgment, order, or opinion under review and any separate findings or determinations that are part of that disposition.

See Appendix 16.50 (example of electronic view of bookmarks).

Rule 16.55
RETENTION OF DOCUMENTS BY eFILERS
{AND CERTIFICATION OF ORIGINAL SIGNATURES}

(1) Unless **{the court orders}** otherwise [*ordered by the court*], **{if an eFiler electronically files an image of}** [*any party who electronically files*] a document that contains the original signature of a person other than the eFiler **{, the eFiler must}** [*shall*] retain the document in **{the eFiler's possession in}** its original paper form for **{no less}**

than 30 days}~~[two years from the date of issuance of the appellate judgment for the case in which the document was filed].~~

(2) {When an eFiler electronically files a document described in subsection (1) of this rule, the eFiler certifies by filing that, to the best of the eFiler's knowledge and after appropriate inquiry, the signature purporting to be that of the signer is in fact that of the signer}~~[Upon reasonable notice, the eFiler must provide a printed copy of a document filed electronically for inspection by another party or by the court.]~~

{Rule 16.60
MANDATORY ELECTRONIC FILING

(1) Except for a document that must or may be conventionally filed under ORAP 16.30, an active member of the Oregon State Bar must file a document using the eFiling system.

(2) A person may obtain a waiver of the requirement in subsection (1) of this rule as follows:

(a) The person must file one of the following:

(i) a request for waiver in all cases before the Court of Appeals, or the Supreme Court, or both, for a specific period of time;
or

(ii) a motion in an existing case for waiver in that specific case.

(b) A request or motion must include an explanation describing good cause for the waiver.

(c) The Administrator is authorized to approve or deny a request filed under subparagraph (a)(i) of this subsection. If the court or the Administrator approves the request, the person must

(i) file a copy of the court's or the Administrator's approval in each case subject to the waiver; and

(ii) include the words "Exempt from eFiling per Waiver Approved [DATE]" in the caption of all documents conventionally filed during the duration of the waiver.

(d) If the court grants a motion filed under subparagraph (a)(ii) of this subsection, the person must include the words "Exempt from eFiling per Waiver Granted [DATE]" in the caption of all documents conventionally filed in the case.

(3) The Administrator is authorized to suspend subsection (1) of this rule when the eFiling system is unavailable for technical reasons other than regularly scheduled weekend maintenance.¹

(a) If the Administrator suspends subsection (1) of this rule, then the Administrator will provide 24-hour advance notice of the suspension to registered eFilers via email and to the public via notice on the Oregon Judicial Department's website.

(b) If the Administrator suspends subsection (1) of this rule, then an active member of the Oregon State Bar may conventionally file a document until 5:00 p.m. on the first full business day after the day on which the electronic filing system becomes available.

(4) If a filer submits a document for conventional filing in contravention of subsection (1) of this rule and the filer has not obtained a waiver pursuant to subsection (2) of this rule, nor is the electronic system unavailable as described in subsection (3) of this rule, then the Administrator is authorized to take any of the following actions:

(a) Accept the document for filing and provide notice to the filer that the Administrator will reject future conventional submissions by the filer that are subject to subsection(1) of this rule.

(b) Refuse to accept the document for filing.

(c) Return the document to the filer as unfiled.

(d) Refer the filing to the court for consideration of sanctions under ORAP 1.20(2).}

¹The regularly scheduled weekend maintenance schedule is posted on the Oregon Judicial Department's website.}