

Oregon Appellate Courts



**Style Manual
(Updated 2017)**

Errata to the Oregon Appellate Courts *Style Manual* (Updated 2017)

Page 42, III.A.15. Legislative History

Revised example:

Audio Recording, House Committee on Judiciary, HB 2460, Apr 16, 2001, at 2:10:38 (comments of Rep Amy Smith and Rep Barbara Jones), <https://olis.leg.state.or.us> (accessed Jan 2, 2013).

Page 43, III.A.16. Initiative Petitions, Ballot Measures, and Voters' Pamphlets

New heading and example:

16. Initiative Petitions, Ballot Measures, and ~~Voters'~~ **Related Pamphlets and Manuals**

Initiative Petition 136 (2001) (IP 136). (narrative form, first reference; citation form)

IP 136. (narrative form, subsequent reference; citation form)

Ballot Measure 40 (1996). (narrative form, first reference; citation form)

Measure 40. (narrative form, subsequent reference; short citation form)

Official Voters' Pamphlet, General Election, Nov 7, 2000, 309. (citation form, first reference)

Voters' Pamphlet at 310. (subsequent reference)

The voters' pamphlet for the 2000 General Election suggests that * * *.
(narrative form)

NOTE: The above examples refer to statewide measures. If citing a local measure, then follow the format set out above, but insert the appropriate local numbering, *e.g.*, Ballot Measure 10-06 (1992).

Elections Division, Oregon Secretary of State, *State Initiative & Referendum Manual* [page] (Jan 2016), [link] (accessed Sept 19, 2017).

Page 50, IV.B.1. Books and Treatises: Citation

Revised example:

Diagnostic and Statistical Manual of Mental Disorders 478 (5th ed 2013) (DSM-~~V~~5). (first reference; include parenthetical if subsequent references or citations follow)

Page 51, IV.B.2. Books and Treatises: Short Citation Form

Revised example:

DSM-~~V~~5 at 480.

OREGON APPELLATE COURTS

Style Manual (Updated 2017)

Preface

The Oregon Appellate Courts have adopted this style manual as a guideline for conventions used in format, citation, quotation, and style when writing opinions. It is not all-inclusive nor an attempt to dictate writing style. *See* ORAP 5.20(4) (referring to Style Manual as guide to conventions in style and citation).

Sincere appreciation to all who added their time and talent to this project.

For form and style questions not covered by this manual,
please contact the OJD Publications Program
(publications@ojd.state.or.us).

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FORMATTING

In General

Slip opinions are double spaced; indented quoted material is single spaced and formatted in the same style as the original material; footnotes are placed at the bottom of the page on which they are referenced. Line numbers are set out along the left hand margin, except the footnote section. The courts use Times New Roman, 13-point font.

Slip opinions consist of a title page, which includes a designation of prevailing party and award of costs portion, followed by the body of the opinion. Cases Affirmed Without Opinion (AWOP) consist of a title page only. Per Curiam Opinions may consist of a title page only, but have the same weight of authority as a signed opinion. Therefore, it is not necessary to indicate parenthetically whether an opinion cited is Per Curiam. Cases that are Affirmed By An Equally Divided Court are resolved by opinion—as opposed to an order—and can consist of a title page only unless a concurring or dissenting opinion is written.

Listed below are the essential elements found on a standard title page of an appellate court opinion, followed by the substantive components generally contained within the body of an opinion. Please note that these are models only and that actual title pages and opinions may vary due to the particular requirements of an individual case.

I. Title Page

A. Date of Opinion

The date that the opinion issues is located in the upper right hand corner of the page preceded by **FILED**:

B. Identifying Caption of the Appellate Court Issuing the Opinion

The identification of the appellate court is centered on the page in uppercase letters, *e.g.*,

IN THE SUPREME COURT OF THE
STATE OF OREGON

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

IN THE OREGON TAX COURT
REGULAR DIVISION

IN THE OREGON TAX COURT
MAGISTRATE DIVISION

C. Names and Roles of the Parties to the Case

Parties are generally listed in the order in which they appeared in the lower court or tribunal, but using their appellate court designations: appellant, respondent, petitioner on review, respondent on review, etc. That information is generally taken from the originating document filed for a case, *e.g.*, the Notice of Appeal or Petition for Judicial Review.

In criminal cases, the STATE OF OREGON is the first party listed, followed by the full name of the defendant.

D. Identification Numbers

Each appellate case is assigned a number when filed, which is centered on the title page below the names of the parties to the case and preceded by any identifying number(s) from the court or agency in which the case originated. If cases have been consolidated on appeal or review, then both appellate case numbers are listed. A Supreme Court case number begins with an “S,” a Court of Appeals case number begins with an “A,” a Tax Court-Regular Division case number begins with “TC,” and a Tax Court-Magistrate Division case number begins with “TC-MD.”

E. En Banc

If a case is decided by the full court, then that will be noted in the first line starting at the left-hand margin. No period follows the en banc designation. The initial letter in each word is in uppercase on the title page (*e.g.*, En Banc), but when used within the text of an opinion, the term is in lowercase letters.

F. Court/Agency of Origination

Identifies where/how the case originated.

G. Trial Court Judge

Identifies judge(s) presiding over the proceedings below. The Supreme Court footnotes that information on the title page with an asterisk.

H. Argued and Submitted Date

Identifies when the case was submitted and whether it was argued. Some cases are submitted on the record only.

I. Names of Counsel

The attorney(s) for all parties to a case are named. If a party appears for himself or herself (sometimes referred to as *pro se*), then that is noted. A person or entity appearing as *amicus curiae* is also identified here, along with the counsel of record. Counsel names are listed as they appear on the signature line of the briefs filed in the case.

Regarding Department of Justice (DOJ) attorneys, use official titles (*e.g.*, Attorney General, Deputy Attorney General, Solicitor General, Deputy Solicitor General, Assistant Attorney General), but do not use any internal DOJ classification or position description, such as “Attorney-in-Charge, Post-Conviction Section” or “Senior Assistant Attorney General,” etc.

Regarding Office of Public Defense Services (OPDS) attorneys, use official titles (*e.g.*, Chief Defender, Criminal Appellate Section; Chief Defender, Juvenile Appellate Section; Deputy Public Defender), but do not use any internal OPDS classification or position description, such as “Chief Deputy,” “Senior Deputy Public Defender,” etc.

J. Panel of Judges/Justices

The panel of judges (in the Court of Appeals and also denoting the Presiding Judge) or the names of the Supreme Court justices deciding the case (if not heard en banc) are listed. When denoting a judge who has retired or resigned, a judge’s designation will reflect the status of the judge at the time the opinion issues.

K. Opinion Author(s)

1. Signed Opinions

The author's name is listed in uppercase. When there is a concurring or dissenting opinion, the name of its author is listed on the title page after the decision line (*e.g.*, Smith, J., dissenting.). Each opinion is arranged in this order: majority; concurring (the authoring justice/judge wishes to write separately, but agrees with both the result and rationale of the majority opinion); specially concurring (the authoring justice/judge wishes to write separately and agrees with the result, but not the rationale, of the majority opinion); concurring in part, dissenting in part; and dissenting (the authoring justice/judge disagrees with the result of the majority opinion). If two or more justices/judges file a concurring or dissenting opinion, then the more senior justice's/judge's opinion goes first. *See, e.g., State v. Dameron*, 316 Or 448, 853 P2d 1285 (1993) (for order of opinions).

When there is a nonparticipating justice in the Supreme Court, that justice's name is footnoted on the title page of the opinion.

2. Per Curiam Opinions

An opinion that summarily disposes of the case may be designated as Per Curiam. The Per Curiam designation is also used for all lawyer discipline, Bar admission, and judicial fitness matters before the Supreme Court.

3. Affirmed By An Equally Divided Court

In rare circumstances, the court may be split evenly regarding the disposition of a case, in which event the case is deemed to be affirmed, although no signed majority opinion is issued.

L. Disposition of Case

A brief statement of the court's holding. This holding is repeated as the last line (set out as a separate paragraph) in the body of the opinion and is referred to as the "tag line." The tag line serves as the court's formal disposition of the case and also serves as further instruction to the lower tribunal(s).

M. Designation of Prevailing Party and Award of Costs

The last part of a Supreme Court or Court of Appeals title page denotes the prevailing party and whether, and to whom, the court allows costs.

II. Body of Opinion

In General

Both custom and tradition influence the content and format of appellate opinions, as does the individual writing style of each judge. It is not the intent here to dictate that style, but to list standard conventions often used to organize opinions. In describing the elements of a typical opinion, our purpose is to give the reader a better understanding of appellate opinions.

Due to the scrutiny to which a published appellate opinion is subjected, the court's discussion, analysis, and holding need to be expressed clearly, succinctly, and carefully. An opinion is crafted to inform the reader of the legal issues presented, discuss the facts, explain the court's analysis, and conclude with the court's final disposition of the case. Because overly long sentences and paragraphs tend to appear formidable, all attempts are made to present the appellate opinion as straightforwardly as possible. Because appellate opinions are formal documents, contractions are used only when quoting from a source in which they appear.

Remember, these are general guidelines only, which means that there always will be exceptions. The requirements of an individual case may demand deviation from the norms here listed.

A. General Format

1. Initial Paragraph—Introduction to the Case

The opinion begins by restating the name of the authoring judge or justice or by using the *Per Curiam* designation in uppercase, set out separately as the first line. The introductory paragraph sets out the general nature of the case, which includes the results in any lower tribunal(s), the main issues on appeal/review, and the final disposition of the court. That provides the framework for the details that follow.

To the extent possible, the opinion refers to parties by their lower tribunal(s) designations, *e.g.*, plaintiff, defendant, claimant, etc. Exceptions include the following: (1) domestic relations cases, in which the parties are referred to as “husband” and “wife”; (2) civil commitment proceedings, in which the person for whom commitment is sought is referred to by his or her position on appeal (appellant, respondent); (3) termination of parental rights proceedings, in which the parents are referred to as “mother” and “father,” and the children are referred to as “child” or “children” or sometimes by initials. The proper names of victims are not used. See page 103 for further discussion.

When citing a concurring or dissenting opinion, the author’s last name is used. When a dissenting or concurring opinion refers to the majority opinion, the majority opinion is referred to as such, not by its author.

If a party has a long name, a shortened version is usually developed for use in subsequent references, *e.g.*, First Security Bank of the Northwest may be referred to simply as “First Security” or “bank.”

2. Statement of Facts

The pertinent facts of a case are set out in a concise and objective manner. Those facts can be organized in patterns, *e.g.*, chronologically or geographically, or by issue, witness, or actor. If an issue is complex, the facts may be set out in general here and then in more detail when discussing the issue to which they relate.

3. Discussion of Issues

The opinion then addresses the dispositive issue(s) in a manner appropriate to the circumstances of the case. One approach is to state the parties’ positions, either in the order in which they were raised below, discussed in the briefs, or dictated by circumstance; respond to those arguments; and then provide an

explanation for the result reached by stating the authorities relied on. Simply stated, the discussion states the issue, how it is resolved on the facts of the case with citation to relevant authority, and the effect of the resolution.

4. Disposition of Case

The final paragraph states the result and gives instructions when necessary. The conclusion is followed by the tag line, a separate paragraph that sets out the court's final ruling and serves as further instruction to the lower tribunal(s).

B. Structural Tools

If a case is complex, then the authoring judge may decide to divide the opinion into designated parts and label them to identify for the reader the discussion of the case. That is accomplished by using the methods discussed below.

1. Paragraph or Section Headings

a. Format

(1) Headings

An author may decide to use principal divisions within an opinion. When used, headings for those divisions are centered and set out in uppercase letters. Roman numerals are not used if subheads are omitted.

(2) Outline Method

If dividing and labeling an opinion into sections and subsections, then the standard outline format is used as set out below. Standard outline rules apply, *e.g.*, if there is a heading designated I., then there must be a II., if there is a subheading A., then there must be a B., etc. Initial caps are used in the first level of subheadings (on all words except articles, prepositions, and conjunctions) unless the subheading reads as a complete sentence. Each new level of subheading starts at a new level of indentation, with an indent following the number or letter.

The levels of outlining are referred to as follows:

- Headings (indicated by Roman numerals)
- Subheadings (indicated by uppercase letters)
- Paragraphs (indicated by numerals)
- Subparagraphs (indicated by lower case letters)
- Subsubparagraphs (indicated by numbers within parentheses)

I. HEADING (centered, uppercase, no italic or boldface font, if there are no subheadings, then do not number headings)

A. *Subheading Example with Initial Uppercase*

Set subheading flush left, beginning with nonitalicized alpha character “A.” Indent after alpha character, followed by italicized subheading. If subheading is not a sentence, then use initial uppercase, but if subheading is a sentence, then use a period and no initial uppercase after the first word.

1. *Paragraph heading is indented and italicized* (do not use initial uppercase after the first word; use a period only if a sentence).
2. *If there is a paragraph 1, then there must be a paragraph 2.*
 - a. Subparagraph heading is indented twice, no italics.
 - b. If there is a subparagraph a, then there must be a subparagraph b.
 - (1) Subsubparagraph heading is indented yet again, no italics.
 - (2) If there is a subsubparagraph (1), then there must be a subsubparagraph (2).

B. *This is an example of a subheading that does not require initial uppercase but does use a period, because it is a sentence.*

If there is a subheading A, then there must be a subheading B. Paragraphs that follow any of these headings are formatted like this one, flush left with a first-line indent.

NOTE: With regard to case names in subheadings, if the opinion subheadings only involve the first scenario (see below), italicize the case name, which reads better to the reader. But, if the opinion subheadings have both scenarios (or only the second one), then format as follows, for internal consistency:

- A. State v. Baker
- B. State v. Jones *and its Progeny*

b. Bulleted or Numbered Lists

It may be more clear to organize certain text, *e.g.*, events, dates, testimony, etc., using a bulleted or numbered list. The bulleted list generally is indented. The use of bullets can help to differentiate items in a list that need no particular order, *e.g.*,

- Car of little or no value
- Boat valued at \$10,000
- Personal jewelry that is valued at more than \$5,000, but less than \$10,000, and similar items.

Numbered lists, with each numeral appearing inside a set of parentheses, help to organize and display information to show relationship, *e.g.*,

Defendant argues as follows: (1) the trial court erred; (2) the error was not harmless; and (3) his conviction should be reversed.

See pages 87 to 88 for further discussion regarding the proper structure for numbered lists.

2. Quotations

When construing a statute or administrative rule, for example, the author generally quotes the pertinent text. The purpose of quotation is to provide the reader with the information necessary to understand the court's discussion of the issues and the law governing its analysis. The proper format for quoted material is discussed in the Citation and Quotation sections.

3. Footnotes

a. In General

Footnotes document sources of information or make ancillary references. Substantive information is best addressed within the body of the opinion. Footnote text begins on the same line as the superscripted footnote number, except when the footnote begins with a block quotation.

b. Citations in Footnotes

When citing a case in a footnote and the case has not previously been cited (in text or footnote), use the full case citation. If the case has already been cited (in text or footnote), then use a short citation. (Note that, if a case is cited for the first time in a footnote, then the first subsequent citation to that case in the text must also be a full citation. See pages 20 and 25.)

c. Referencing to and Setting Out Footnoted Text Within Body of Opinion

Footnote numbers, where applicable, are placed after periods, commas, colons, semicolons, and quotation marks. Footnote numbers also are placed after a closing parenthesis, unless the footnote refers to material inside the parentheses. Footnote numbers inserted within quoted material are set out using superscripted brackets.

4. Maps/Pictures/Appendices

It may be necessary to include graphic information to convey a more clear understanding of the issue(s). In that event, a photograph, map, or chart is either appended to the opinion or inserted within the text where applicable. When included, an appendix is usually first described in narrative form. The appendix typically begins on a separate page at the end of the opinion with the heading "Appendix."

C. Writing Tools

1. Fonts

a. Italics and Underscoring

Italic typeface is used within opinions to denote case names, to set out introductory signals, to indicate and less common foreign terminology, and to supply emphasis. See examples listed on page 67. Excessive use of italics for emphasis is discouraged.

Underscoring is used only in quotations when the original source used underscoring for emphasis or headings and the like.

b. Boldface and Uppercase

It is best to avoid using a variety of styles and fonts within an opinion. Use of boldface or all uppercase letters in text is discouraged as a distraction to the reader. Italic type generally is sufficient to show emphasis. Avoid using ***UPPERCASE BOLDFACE ITALIC***, as it is difficult to read.

2. Make Smooth Transitions

When turning to a new issue or argument within an opinion, use introductory sentences or paragraphs to indicate transition between discussions. Use signal words to connect thoughts back to a preceding point or ahead to the next one, *e.g.*, further, however, consequently, etc. Explore one idea per paragraph, relating each sentence to that central idea.

CITATION

In General

In legal citation, it is paramount to cite authorities in a clear and concise manner, thereby enabling the reader to locate those sources. Within this Style Manual, we have endeavored to include citation examples of sources often cited within the framework of appellate opinions. When citing an authority not discussed here, follow the format of like material.

Citations should be made to official print sources whenever possible. If there is no official printed version or if it is difficult to obtain, or the publishing entity has designated an electronic source as the official version, then citation to that source should follow the format (as closely as possible) as described within this manual.

I. Organization and Arrangement

A. *The Bluebook*

The appellate courts generally follow the citation practices set out in the most current version of The Harvard Law Review Association's *The Bluebook, A Uniform System of Citation*, except as noted in this Style Manual. *The Bluebook* is used as the default source for citation questions not addressed here.

B. Consistency of Citations

If you cannot find a specific rule that addresses your particular citation situation, then cite the authority in a clear, sensible manner that will convey the information needed to find the cited authority. Consistency within a particular document is important to avoid distracting and confusing the reader.

In subsequent case history, if all the decisions in one case take place during the same year, then place the date (year) once at the end of the entire citation. However, if the decisions span more than one year, then place all years in the appropriate places, as shown in the examples. See, *e.g.*, pages 23 to 24.

Standard references used for prior or subsequent case history in citations are as follows:

Acceptable Abbreviations:

adh'd to on recons (adhered)
aff'd (affirmed)
cert (*certiorari*)
cert den (*certiorari* denied)
recons (reconsideration; not *recon*)
reh'g (rehearing)
rem'd (remanded)
rev'd (reversed)
rev (revised)
rev den (review denied)
vac'd (vacated)
writ den (writ of mandamus denied)

Terms Not Abbreviated:

allowed (not *all*)
appeal dismissed
as improvidently allowed
compiled as a note after
decision by order
dismissed (not *dism*)
modified (not *mod*)
overruled on other grounds

C. Case Names

When citing Oregon appellate cases, DO NOT use the title page, a regional reporter, Premise, Westlaw, or LEXIS as a source for the official case name. Use the case

name exactly as published in the official state reporter, located at the top of either the odd- or even-numbered pages. In the Oregon Reports and the Oregon Appellate Courts Advance Sheets, the case name appears on the even-numbered pages. If citing a case from a jurisdiction that does not have its own separate official reporter or if you do not have access to the official reports, then use the case name as used in the regional reporter or follow the naming conventions as set out in *The Bluebook* when using online services. Cases that are Affirmed Without Opinion are listed in tables using their full case titles. In the event that such a case needs to be cited using a shortened case name, please contact the Publications Program for the correct case name if it is not easily discernible.

In older bound volumes of the Oregon Reports, case names are shown with small uppercase letters. Replace those with ordinary Roman type for citation purposes. Also in older volumes, running heads are sometimes shown using *et al.*, *et ux.*, or *et vir.* to indicate additional parties. For purposes of consistency when citing such cases, those abbreviations should be included, as well as their punctuation.

D. Spaces and Abbreviations of Citations

Generally, spaces in citations are used to separate longer abbreviations, *e.g.*, S Ct, F Supp, L Ed 2d, Or L Rev, Tex App, etc. A space is not necessary between adjacent single uppercase letters or numerals and ordinals that are treated as single uppercase letters, *e.g.*, P3d, NE2d, NYS2d, but insert a space before any abbreviation containing two or more letters, *e.g.*, So 2d. Periods are not used after abbreviations, except when quoting material in which they are included.

E. String Citations

When using string citations, follow *The Bluebook* format for the order of authorities, *i.e.*, (1) cases decided by the same court, or by all federal circuit courts of appeals or federal district courts, are arranged in reverse chronological order; and (2) different courts generally are set out by rank. Use a semicolon, not a comma or the word “and,” to separate citations within a string.

F. Signals

Introductory signals are used to indicate the level of support to be found in a citation, suggest comparison, indicate contradiction, or indicate background material. When using a signal, it is important to recognize the intent of the signal. Some signals indicate support: *e.g.*, *see*, *see also*, *accord*, *cf.*; others comparison: *compare* (using the construction *compare and* or *compare with*); or contradiction: *contra*, *but see*, *but cf.*;

and background: *see generally*. Like signals are grouped into a single citation sentence, separated by a semicolon.

The courts generally follow *The Bluebook* regarding the appropriate use of signals, *i.e.*, the, meaning of each signal, order of signals, order of authorities within signals, and parentheticals with signals. When using signals, the courts typically include a parenthetical explanation briefly describing the relevance of the authority cited, *e.g.*,

Cf. State v. Brown, 300 Or 125, 130, 860 P2d 498 (1985) (hearsay inadmissible at trial).

See, e.g., OEC 401 (regarding relevancy of evidence).

School Dist. 1, Mult. Co. v. Bingham et al., 204 Or 601, 611, 283 P2d 670, *modified on reh'g*, 204 Or 606, 284 P2d 779 (1955) (when interpreting Oregon Constitution, court must assume that every word, clause, and sentence therein inserted for some useful purpose).

NOTE: No signal is needed when the cited authority directly states the proposition; in some situations, it still may be advisable to include a parenthetical explanation, even if no signal is used. Also, note that the internal comma within a signal is italicized.

G. Parenthetical Information

Parenthetical explanations are added as needed to describe the relevance of an authority that is cited in the text. Although not mandatory, often that information is helpful for clarification. A parenthetical statement can consist of quoted material or a brief statement. When including a parenthetical explanation in a case with citations to subsequent history, place the explanation following all the subsequent case history. Quoted statements that read as a complete sentence should include an initial uppercase letter and period (with brackets and/or an ellipsis, if appropriate), but other material that reads as a sentence does not receive an initial uppercase letter or a period, *e.g.*,

Old v. Navy, 555 Or App 444, 447, 222 P3d 888 (2015) (“[An] award of ‘reasonable’ attorney fees does not preclude the use of a multiplier or other fee enhancement * * *. Such an enhancement may be applied at the beginning of the calculation process.”).

Aber v. Crombie, 123 Or 234, 236, 456 P3d 678 (2015) (the constitution does not provide that shirts have to be “button down”).

See, e.g., People v. Vasquez, 148 P3d 326, 330 (Colo Ct App 2006), *rev den*, No 06SC556, 2006 WL 3404625 (Colo, Nov 27, 2006) (“Because the reasonable person standard requires a ‘defendant [to] appraise the situation as would a reasonable *sober*

[person],’ evidence of voluntary intoxication is irrelevant to the defendant’s affirmative defense of self-defense.” (Quoting LaFave, 2 *Substantive Criminal Law* § 9.5(d) at 51 (emphasis in LaFave; brackets in *Vasquez*)).

More examples of parenthetical phrases can be found on pages 57 to 58.

II. Case Law

A. Oregon–Full Citations

When citing a case for the first time in the text of an opinion (majority, concurring, or dissenting) use the full case citation. (If the case has previously been cited in full in a footnote, then the first textual citation to the case should still be a full citation.) See page 13.

The basic citation format for a full case citation includes these elements, in this order: name of the case (using the official running head); volume, abbreviated name of the official reporter, and beginning page number of the case; parallel citation to regional reporter; parenthetical indicating year case was decided; subsequent history; and any other pertinent parenthetical information.

1. Supreme Court

PGE v. Bureau of Labor and Industries, 317 Or 606, 859 P2d 1143 (1993).

NOTE: Oregon Supreme Court cases issued before 1888 have no parallel citations.

On rehearing

Older Oregon cases with separate “rehearing” decisions have one Oregon citation (because the rehearing decision was published immediately after the initial decision), but two West citations. For those cases, the year shown in the published case name at the top of the odd- or even-numbered pages is the year that a decision on rehearing was issued, not the year that the case initially was decided (if different). Citation to such cases depends on whether you are citing to the original decision or the decision on rehearing.

If citing the initial decision, include the date of that decision, then include the rehearing information as subsequent history:

State v. Laundry, 103 Or 443, 455, 204 P 958 (1921), *reh’g den*, 103 Or 503, 206 P 290 (1922).

NOTE: Opinion on the merits begins on page 443, but opinion on rehearing starts on page 503.

If citing the rehearing decision, then cite both decisions, with the rehearing year and a “rehearing” indicator:

State v. Laundry, 103 Or 443, 503, 206 P 290 (1922) (on rehearing).

On reconsideration (specify disposition):

Goodyear Tire & Rubber Co. v. Tualatin Tire & Auto, 322 Or 406, 908 P2d 300 (1995), *modified on recons*, 325 Or 46, 932 P2d 1141 (1997).

NOTE: If citing only the case on reconsideration, it is not necessary to include the earlier case citation, e.g., *Goodyear Tire & Rubber Co. v. Tualatin Tire & Auto*, 325 Or 46, 932 P2d 1141 (1997).

Overruled by subsequent Oregon case:

Rose v. Port of Portland, 82 Or 541, 552, 162 P 498 (1917), *overruled in part on other grounds by State ex rel Heinig v. Milwaukie et al*, 231 Or 473, 479, 373 P2d 680 (1962).

Rejected by subsequent Oregon case:

State v. Smith, 295 Or 200, 625 P2d 20 (1981), *rejected in part by State v. Jones*, 321 Or 100, 805 P2d 150 (1991).

(Other alternatives, such as, “abrogated by” and “questioned by,” can be used as appropriate.)

Certiorari (or writ) denied by United States Supreme Court:

Dept. of Trans. v. Lundberg, 312 Or 568, 825 P2d 641, *cert den*, 506 US 975 (1992).

Whitman v. United States, 904 F Supp 2d 363 (SDNY 2012), *writ den*, 574 US ___, 135 S Ct 352 (2014).

NOTE: (1) Always include *cert den*, if applicable. (2) If *certiorari* is dismissed, use the same format as the above example, substituting “*cert dismissed*” for “*cert den*.” (3) Unless *certiorari* is denied or dismissed by opinion, parallel citations are not necessary for “*cert den*” or “*cert dismissed*” after they are published in the United States Reports.

Certiorari granted by United States Supreme Court (include as much information as is available at the time that you are writing). These examples list earliest to latest sources:

State v. Ice, 343 Or 248, 70 P3d 1049, *cert granted*, __ US __, 76 USLW 3496 (Mar 17, 2008).

State v. Ice, 343 Or 248, 70 P3d 1049, *cert granted*, __ US __, 128 S Ct 1657 (2008).

State v. Ice, 343 Or 248, 70 P3d 1049, *cert granted*, 552 US 1256 (2008).

Supreme Court opinion reversed by United States Supreme Court:

Gilliam County v. Dept. of Environmental Quality, 316 Or 99, 849 P2d 500 (1993), *rev'd and rem'd sub nom Oregon Waste Systems, Inc. v. Department of Environmental Quality of Ore.*, 511 US 93, 114 S Ct 1345, 128 L Ed 2d 13 (1994).

Sub nom indicates that a different case name was used in subsequent history. Regarding changing case names, follow this rule: When the name of the case differs in prior or subsequent history, the new name must be given, except (1) when the parties' names merely are reversed; (2) when the citation in which the difference occurs is to a denial of *certiorari* or rehearing; or (3) when, in the appeal of an administrative action, the name of the private party remains the same.

Use the word "by" when referring to subsequent case history only if referring to an entirely different case, *e.g.*,

Keenan v. Norris-Lampe, 330 Or 456, 777 P2d 897 (1999), *overruled on other grounds by Bennett v. Bauman*, 333 Or 566, 790 P2d 654 (2001).

Otherwise, use *sub nom*, as explained above, *e.g.*,

Smith v. Jones, 330 Or 456, 777 P2d 897 (1999), *rev'd on other grounds sub nom Jones and White v. Smith*, 668 US 123, 113 S Ct 1346, 129 L Ed 2d 14 (2001).

2. Court of Appeals

Lesch v. DeWitt, 118 Or App 397, 847 P2d 888 (1993).

Overruled by subsequent Oregon case:

Eklund v. Clackamas County, 36 Or App 73, 583 P2d 567 (1978), *overruled on other grounds by Forman v. Clatsop County*, 63 Or App 617, 665 P2d 365 (1983).

Supreme Court review denied:

Allred v. Board of Parole, 124 Or App 278, 862 P2d 546 (1993), *rev den*, 318 Or 325 (1994).

More than one petition for review denied:

Allred v. Board of Parole, 124 Or App 278, 862 P2d 546 (1993), *rev den*, 318 Or 325; 318 Or 502 (1994).

NOTE: (1) Always include *rev den* and *cert den*, if applicable. (2) Unless the review denied or *certiorari* denied citation is not available or there is an opinion denying review or *certiorari*, parallel citations are not necessary. (3) Before 1976, disposition of petitions for review were not published; accordingly, only the year and disposition are indicated, *e.g.*, *State v. Smith*, 14 Or App 72 (1973), *rev den* (1974). (4) When a petition for review has been filed in a case, but not yet acted on, the current practice of the appellate courts is NOT to show that review is pending. However, practitioners may want to do so when writing a brief.

Supreme Court review allowed, but case not yet decided:

Lesch v. DeWitt, 118 Or App 397, 847 P2d 888, *rev allowed*, 317 Or 162 (1993).

Supreme Court review allowed, then later dismissed:

Finch v. Andrews, 124 Or App 558, 863 P2d 496, *rev dismissed*, 320 Or 267 (1994).

NOTE: If applicable, it is optional to include “*as improvidently allowed*” after “*rev dismissed*.”

Court of Appeals decision affirmed by Supreme Court:

State v. McCoy, 17 Or App 155, 521 P2d 1074, *aff’d*, 270 Or 340, 527 P2d 725 (1974).

Court of Appeals decision reversed by Supreme Court:

State v. Cloutier, 33 Or App 121, 575 P2d 996, *rev’d on other grounds*, 286 Or 579, 596 P2d 278 (1979).

Court of Appeals decision remanded by Supreme Court:

State v. White, 59 Or App 61, 650 P2d 184 (1982), *rem’d*, 297 Or 302, 685 P2d 983 (1984).

Court of Appeals decision on reconsideration (specify disposition):

Kirpal Light Satsang v. Douglas County, 96 Or App 207, 772 P2d 944, *adh'd to on recons*, 97 Or App 614, 776 P2d 1312 (1989).

State v. Ramirez, 205 Or App 113, 133 P3d 343, *adh'd to on recons*, 207 Or App 1, 139 P3d 981 (2006), *rev'd on other grounds*, 343 Or 505, 173 P3d 817 (2007), *adh'd to as modified on recons*, 344 Or 195, 179 P3d 673 (2008).

NOTE: Whether to include “on other grounds” in subsequent history to the Court of Appeals opinion depends on the proposition for which the case is being cited.

Court of Appeals decision vacated by unpublished order:

Davis v. Johnson, 155 Or App 266, 958 P2d 907 (1998), *decision vac'd by order*, July 21, 1998.

Oregon review denied and United States Supreme Court *certiorari* denied (but not by opinion):

State Highway Com. v. DeLong Corp., 9 Or App 550, 495 P2d 1215, *rev den* (1972), *cert den*, 411 US 965 (1973).

Axen v. American Home Products Corp., 158 Or App 292, 974 P2d 224, *adh'd to on recons*, 160 Or App 19, 981 P2d 340, *rev den*, 329 Or 357 (1999), *cert den*, 528 US 1136 (2000).

If *certiorari* is dismissed, use the same format as the above example, substituting “*cert dismissed*” for “*cert den*.”

Certiorari denied by opinion by United States Supreme Court:

State v. Smith, 30 Or App 462, 575 P2d 369, *rev den*, 282 Or 823 (1978), *cert den*, 454 US 324, 99 S Ct 379, 25 L Ed 2d 889 (1979).

Appeal dismissed by United States Supreme Court (if by opinion, as in the example below, include parallel citations; otherwise, cite only United States Reporter):

Boykin v. Ott, 10 Or App 210, 498 P2d 815, *rev den* (1972), *appeal dismissed*, 411 US 912, 36 S Ct 304, 93 L Ed 2d 1554 (1973).

3. Tax Court

Regular Division:

Fellows v. Dept. of Rev., 14 OTR 13 (1999).

Unpublished Regular Division Decisions:

Fellows v. Dept. of Rev., TC 4952, WL 2037643 (Or Tax, May 24, 1999).
(optional to include Westlaw reference, but recommended)

Magistrate Division:

Jacobs v. Harney Co., 16 OTR-MD 344 (2001).

Unpublished Magistrate Division Decisions:

Jacobs v. Harney Co., TC-MD 994356Z, WL 842084 at *3 (Or Tax M Div, Apr 7, 2000). (optional to include Westlaw reference, but recommended)

NOTE: For citing subsequent history, refer to examples for the Court of Appeals.

4. Case Not Yet Appearing in Publication

Jones v. State of Oregon, ___ Or ___, ___, ___ P3d ___ (Apr 1, 2013) (slip op at 15:9-16).

Smith, ___ Or at ___ (slip op at 28:6 - 29:2).

Smith, ___ Or at ___, ___ (slip op at 28:6 - 29:2; slip op at 31:17 - 32:2).

NOTE: To ensure correct cross-referencing within a slip opinion, the appellate courts cite the appropriate page number(s). For added accuracy, the Supreme Court also includes the specific line number(s).

Smith v. Jones, ___ Or App ___, ___ n 3, ___ P3d ___ (Feb 1, 2013) (emphasis added) (slip op at 5 n 3).

NOTE: If uncertain as to what the proper shortened case name would be for a case, such as an opinion issued the same day or a case that was affirmed without opinion, contact the Publications Program for the correct case name for citation purposes (as there is a limit to the number of characters that can be used).

B. Oregon—Short Citations and Other Issues

1. In General

When citing a case that has already been cited in the text of an opinion, use a short citation. However, if the only previous citation to a case is in a footnote, use the full citation the first time the case is cited in the text. See page 13.

When using a shortened case name in a short citation, the shortened case name is the first nongovernmental party appearing in the official case name citation, *e.g.*,

State v. Bates, 304 Or 519, 747 P2d 991 (1987). (full citation, first reference)

Short citation form is [shortened case name], [volume number] [reporter] at [page], *e.g.*,

Bates, 304 Or at 522 (eliminating the parallel citation).

When citing a specific page when the case name is used in the sentence being cited, or if there otherwise is no doubt as to the case being cited, the case name may be omitted from the citation, *e.g.*,

In *Bates*, this court stated that the officers violated defendant's constitutional rights by instructing him to move bag into view. 304 Or at 527.

or

In *Bates*, this court addressed a similar issue. The court held that, by ordering defendant to move the bag, the police violated defendant's constitutional rights. 304 Or at 527.

Otherwise, include the shortened case name with the citation:

This court held that the officers violated defendant's constitutional rights by instructing him to move the bag into view. *Bates*, 304 Or at 527.

NOTE: Even when a governmental official is individually named, use the first nongovernmental party appearing in the official case name citation for the shortened case name.

2. Variations on Case Name

If a shortened case name causes confusion, such as if two cases with similar names have been cited within the same opinion, then use the full case name for each throughout the opinion, *e.g.*,

State v. Bates
Bates v. Smith

When both parties have the same last name, as in some domestic relations matters, *e.g.*, *Smith and Smith*, use *Smith* as the short cite.

Additionally, an explanation might need to be added for clarity, such as a modified case name in parentheses, if there are related cases in a series, *e.g.*,

The accused has a disciplinary record, having been suspended twice from the practice of law. See *In re Wyllie*, 326 Or 447, 952 P2d 550 (1998) (*Wyllie I*) (one-year suspension for refusing to comply with remedial program); *In re Wyllie*, 327 Or 175, 957 P2d 1222 (1998) (*Wyllie II*) (two-year suspension for misrepresenting compliance with MCLE requirements and failing to cooperate). In *Wyllie I*, * * *

or

The Court of Appeals affirmed the tort judgment, concluding that it was unnecessary to resolve the breach of contract counterclaim. *Northwest Natural Gas Co. v. Chase Gardens, Inc.*, 146 Or App 249, 933 P2d 370 (1997) (*Chase I*). This court allowed review in *Chase I*, reversed, and remanded for consideration of Chase's contract claim. *Northwest Natural Gas Co. v. Chase Gardens, Inc.*, 328 Or 487, 982 P2d 1117 (1999) (*Chase II*). On remand, the Court of Appeals, relying in large part on its earlier decision and this court's decision in *Chase II*, concluded that Chase's breach of contract judgment could not be sustained. *Northwest Natural Gas Co. v. Chase Gardens, Inc.*, 164 Or App 763, 995 P2d 555 (2000) (*Chase III*). We now reverse the Court of Appeals decision in *Chase III*.

In lawyer disciplinary cases, the shortened case name is the lawyer's last name, without the *In re* designation, *e.g.*,

In re Jones, 326 Or 195, 951 P2d 149 (1997). (full citation form)

Jones, 326 Or at 198. (short citation form)

In mandamus cases initiated after 1997, the case name is the same as the case name of the proceeding in the lower court, and the judge's name (if the case involves a circuit court judge action) does not appear in the title, *e.g.*, *State v. Foster*. In older mandamus cases, the name of the judge whose action was being challenged was included in the title, together with a "*State ex rel*" designation; cite such cases as follows:

State ex rel Huddleston v. Sawyer, 324 Or 597, 932 P2d 1145 (1997). (full citation form)

Huddleston, 324 Or at 600. (short citation form)

NOTE: The appellate courts do not use "*supra*" as a substitute for short citations.

3. Citation to Series of Pages

When citing a series of pages, indicate the page numbers as follows:

Stranahan, 331 Or at 57-58.

Fugate, 332 Or at 202-03. (not 202-3)

Joslin, 332 Or at 499-501. (not 499-01)

4. Use of “*id.*” with Case Names

When citing the immediately preceding authority, it is acceptable to use *id.*, *e.g.*,

Id. at 525.

If citing the same page of the immediately preceding authority, then use *id.* without the page number.

CAUTION: Do not use *id.* where there is an intervening citation to another authority (be it a case name, statute, or some other authority). When there is an intervening textual reference, use *id.* only when there is no danger of ambiguity.

5. Citation to Footnote

State v. Trenary, 114 Or App 608, 610 n 2, 836 P2d 739 (1992).

Trenary, 114 Or App at 610 n 2. (short citation form)

When citing a series of footnotes, indicate the page numbers as follows:

State v. Trenary, 114 Or App 608, 610 nn 3-5, 836 P2d 739 (1992).

State v. Trenary, 114 Or App 608, 610 n 3, 611 nn 4 & 5, 836 P2d 739 (1992).

NOTE: Citation is to the first page on which the footnote appears, even if it spans more than one page, no matter where the pertinent text actually appears.

When citing text contained in the body of the opinion and also in a footnote set out on the same page, set out the page number twice, *e.g.*,

Trenary, 114 Or App at 610, 610 n 2.

or

Trenary, 114 Or App at 610 & n 2.

6. Internal Citations; Dissents; Concurrences

The majority cites a dissenting or concurring opinion in all references (regardless of the number of dissenting or concurring opinions) as follows:

The dissent contends that the statute operates prospectively only. ___ Or App at ___ (Smith, J., dissenting) (slip op at 3).

A dissent or concurrence cites the majority opinion as follows (do not include the case name):

The majority concludes that the statute operates retroactively. ___ Or App at ___ (slip op at 7).

A dissent or concurrence cites itself as follows:

As noted above, I dissent because I disagree with the majority's statutory construction and conclusion. ___ Or App at ___ (Smith, J., dissenting) (slip op at 1).

NOTE: Do not use *supra* or *infra* and do not use only “See note 6” when referring to earlier or later parts of an opinion (be it majority, concurring, or dissenting); instead, use the short citation. For example, a majority internal citation is set out as:

As noted, ORS 813.010 prohibits driving under the influence of intoxicants. See ___ Or App at ___ n 6 (slip op at 4 n 6).

7. Short Citation Form for Oregon Tax Cases

Fellows, 14 OTR at 17. (Regular Division)

Jacobs, 16 OTR-MD at 347. (Magistrate Division)

8. Possessive Endings on Case Names

When a name of a case takes a possessive ending, the “'s ” is not italicized, *e.g.*,

Bates's rule applies in this case.

C. Federal Jurisdictions

For United States Supreme Court cases, the case name for citation purposes is taken from the case name citation in the United States Reports (US), if available (which appears on the odd-numbered pages); otherwise, use the case name citation from an alternative reporter. (Note that the case name citations frequently differ in those

publications.) The short citation also is to the US Reports, if available; otherwise, cite the Supreme Court reports, if available, if not, then cite the Lawyer’s Edition. (Note that some material within the text of the Court’s opinions, such as citations and quotations, often varies between publications.) If the US Reports citation is not available, insert “___ US ___” (including a blank for a jump / pinpoint) citation, if applicable) in all full and short citations, before the citation to an alternative reporter.

1. United States Supreme Court

Wagner v. Oregon, 492 US 914, 109 S Ct 3235, 163 L Ed 2d 583 (1989). (first reference)

Wagner, 492 US at 916. (short citation form)

NOTE: It is acceptable to refer to *Miranda v. Arizona* without including full citation, e.g., “*Miranda* rights” or “*Miranda* warnings.”

2. Federal 3d and 2d (case name appears on odd-numbered pages)

Johnson v. Clifton, 74 F3d 1087 (11th Cir), *cert den*, 519 US 808 (1996).

Freije v. United States, 408 F2d 100, 102 (1st Cir), *cert den*, 396 US 859 (1969).

U.S. v. Echeverri, 982 F2d 675 (1st Cir 1993).

United States v. Wainwright, 413 F2d 796, 803 (10th Cir 1969), *cert den*, 396 US 1009 (1970).

3. Federal Supplement (case name appears on odd-numbered pages)

Lucas v. Seagrave Corporation, 277 F Supp 338 (D Minn 1967).

United States v. Zeiger, 350 F Supp 685 (DDC), *rev’d*, 475 F2d 1280 (DC Cir 1972).

If unpublished:

Smith v. Jones, No CV 96-6109-TC (D Or Feb 5, 2001).

NOTE: For abbreviations of federal district courts, see *The Bluebook*.

4. Federal Cases with Incomplete Information

United States v. Edwards, ___ US ___, 94 S Ct 1100, 39 L Ed 2d 771 (1974). (first reference)

Id. at ___, 94 S Ct at 1109 (short citation form)

Washington v. Glucksberg, ___ US ___, ___ S Ct ___, ___ L Ed 2d ___, 65 USLW 4669 (June 24, 1997).

United States v. Louiriev, 22 Crim L Rep 2369, ___ F2d ___ (8th Cir, Dec 30, 1977).

Naquin v. Elevating Boats, L.L.C., 744 F3d 927 (5th Cir), *cert den*, ___ US ___, 135 S Ct 357 (2014).

5. Federal Tax Cases

The order of authority for federal tax cases is (1) the United States Supreme Court; (2) federal courts of appeals; (3) federal district courts; and (4) the United States Tax Court. Federal tax cases from the United States Supreme Court, United States Court of Appeals, Court of Federal Claims, and United States District Court are combined and bound as “U.S. Tax Cases”; therefore, the best citation will contain both the federal and parallel citations. For example,

Furlow, Jr. v. U.S., 55 F Supp 2d 360, 2000-1 US Tax Cas (CCH) ¶ 50,684 (D Md 1999).

NOTE: “U.S. Tax Cases” often is abbreviated as “USTC,” but that is not the formal citation.

United States Tax Court:

Benson v. Commissioner, 80 TC 789 (1983).

Crook v. Maine, 132 TCM (CCH) 44 (1999). (memorandum decision)

D. States Other Than Oregon

NOTE: For abbreviations of state and regional reporters, see *The Bluebook*.

For states other than Oregon, cite the official reporter first, then add the regional reporter when using jump/pinpoint citations because that benefits readers who have access to only regional reporters, *e.g.*,

In *Statser v. Statser*, 205 Okla 608, 611, 239 P2d 764, 766 (1951), the court stated:

“[T]he terms of the condition are directed to defendant’s granting or withholding permission; the condition does not purport to authorize police action.”

The court continued:

“Defendant, of course, may argue that the safeguard for employees exceeds the ordinary standard of due care considering the nature of the risk and the foreseeability of injury.”

Id. at 615, 239 P2d at 768.

NOTE: The appellate courts accept practitioners’ submissions jump /pinpoint citing only regional reporters *except* when citing Oregon appellate decisions.

For cases not yet appearing in publication, it is acceptable to use a citation to Westlaw, *e.g.*,

State v. Smith, No 26245-2-II, 2013 WL 651868 at *2 (Wash App Div 2, Apr 19, 2013).

When the official reporter (*i.e.*, the state reporter) is the same for both the highest court and the intermediate appellate court, include the court abbreviation in the date parenthetical, *e.g.*,

State v. Gray, 231 Ariz 374, 295 P3d 951 (Ariz Ct App 2013).

When the official reporter is the regional reporter, include the court abbreviation in the date parenthetical, *e.g.*,

Golphin v. State, 945 So 2d 1174 (Fla 2006).

E. Online Sources

A case unreported in a print source can be cited if it resides online in a readily recognized source. The case name, number, database identifier, court name, and complete date should be included along with any other identifiers that are pertinent to its location.

Silva v. Mt. Bachelor, Inc., No CV 06-6330-AA, 2008 WL 2889656 at *2 (D Or July 21, 2008).

For cases having a state citation, in part, and an online citation, in part:

Zollner v. Smith, 268 Ga App 480, 484, 602 SE2d 140, 141, *rev den*, 2004 Ga LEXIS 1059 (2004).

III. Constitutional, Statutory, and Other Related Citations

NOTE: *Id.* (or *id.* § ____, if applicable) can be used as a subsequent reference citation to constitutional provisions, statutory and code provisions (both current provisions and older codes), legislative commentary, and other types of sources discussed in this section.

A. Oregon Citations

1. Oregon Constitution

a. Narrative Form:

Article I, section 17, of the Oregon Constitution provides that * * *.
(first reference)

Article VII (Amended), section 1, provides that * * *. (subsequent
reference)

b. Citation Form:

Or Const, Art I, § 17.

Or Const, Art VII (Amended), § 3.

Or Const, Art VII (Original).

Or Const, Art XI, § 11b(2)(b).

Or Const, Art I, § 11 (1857). (denoting the original version of Article
I, section 11, NOT the current version)

NOTE: (1) The word “Article” is always shown as beginning with an uppercase “A.” (2) The article number is always a Roman numeral. (3) “Amended” begins with an uppercase “A.” (4) In narrative, the word “section” is always lowercase except in a heading or subheading. (5) Do not use periods after abbreviations. (6) Original Article VII was replaced in 1910, which is why it is referred to as amended.

2. Oregon Laws

Oregon Laws 1989, chapter 790, section 87. (narrative form)

Oregon Laws 1990, chapter 2, sections 45 to 47 (Special Session). (narrative
form)

Oregon Laws 1995, chapter 790, section 84, directs the commission to * * *.
(narrative form)

Or Laws 1989, ch 790, § 87. (citation form)

Or Laws 1990, ch 2, §§ 3-10 (Spec Sess). (citation form)

NOTE: Insert a space after a section or paragraph symbol; when using two such symbols, no space separates them.

Statutes that have not been assigned by the legislature to an ORS chapter often are compiled into the ORS in small typeface at the place in the ORS where Legislative Counsel decides they logically belong. *See* ORS Preface, viii (2001). Refer to such statutes as follows:

Oregon Laws 1997, chapter 30, section 2(1), *compiled as a note after* ORS 659.010 (1997). (narrative form, first reference)

Oregon Laws 1997, chapter 30, section 2(1). (narrative form, subsequent reference)

Or Laws 1997, ch 30, § 2(1), *compiled as a note after* ORS 659.010 (1997). (citation form, first reference)

Or Laws 1997, ch 30, § 2(1). (short citation form)

Oregon Laws 2005, chapter 463, section 1, *compiled as a note before* ORS 136.001 (2005). (narrative form, first reference)

Oregon Laws 2005, chapter 463, section 1. (narrative form, subsequent reference)

Or Laws 2005, ch 463, § 1, *compiled as a note before* ORS 136.001 (2005). (citation form, first reference)

Or Laws 2005, ch 463, § 1. (short citation form)

Occasionally, Legislative Counsel will compile such statutes so that they appear as legislatively placed statutes, *e.g.*, ORS 475A.010, ORS 475A.040, and other civil forfeiture statutes. Those statutes are cited in the same manner as legislatively placed statutes, as explained in paragraph 5 below.

3. General Laws of Oregon and Other Older Statutory Compilations

Some of these compilations are organized by chapters, which incorporate several titles, and others are organized by titles, which incorporate several chapters. It is advisable to include page numbers when citing the Deady compilations, because the various codes are not numbered and there are no indices or general tables of contents to guide the reader to the proper location regarding particular

sections of a code (*e.g.*, Criminal Code, Civil Code, etc., each of which is made up of multiple chapters). Some older cases incorporate neither chapters nor titles; for such codes, cite to the applicable section and page numbers.

General Laws of Oregon, Crim Code, ch XVIII, § 659, p 435 (Deady & Lane 1843-1872).

General Laws of Oregon, Civ Code, ch IV, title I, § 313, p 226 (Deady 1845-1864).

The Codes and General Laws of Oregon, ch XVIII, title IV, § 2933 (Hill 1887).

The Codes and General Laws of Oregon, ch I, title VIII, § 67 (Hill 2d ed 1892).

The Codes and Statutes of Oregon, title V, ch I, § 339 (Bellinger & Cotton 1901).

Lord's Oregon Laws, title VI, ch V, § 442 (1910).

Oregon Laws, title I, ch III, § 39 (1920).

Oregon Code, title XXVIII, ch 1, § 28-101 (1930).

4. OCLA (Oregon Compiled Laws Annotated)

OCLA § 3-505.

OCLA § 10-902a (1944-47 pocket part).

5. ORS (Oregon Revised Statutes)

Always use the abbreviated form (ORS) in both narrative references and citations.

ORS 161.155(1)(a)(A). [chapter 161][section 155][subsection (1)][paragraph (a)][subparagraph (A)]

Numbered paragraphs within a section are referred to as subsections, lettered paragraphs as paragraphs. For example, ORS 305.220(1)(a) would be referred to in text individually as paragraph (a) of subsection (1), when referring to (1)(a) collectively, use paragraph (1)(a).

a. Narrative Form Examples

ORS chapter 554. (when referring to an entire chapter)

ORS 30.150 to 30.175; ORS 250.035(2)(a) to (c). (when referring to a statutory sequence)

ORS 30.866 and ORS 163.730. (when referring to two statutes)

ORS 250.035(2)(a) and (b). (when referring to two parts of the same statute)

b. Citation Form Examples

ORS ch 554. (when citing an entire chapter)

ORS 30.150 - 30.175; ORS 250.035(2)(a) - (c). (when citing a statutory sequence)

ORS 30.866; ORS 163.730. (when citing two statutes)

ORS 250.035(2)(a), (b). (when citing two parts of the same statute)

NOTE: When citing a sequence of statutes in citation, do not use “*et seq.*”; instead, set out the first and last statutes of the sequence.

c. Repealed or Renumbered Statute Examples

When citing a repealed or renumbered ORS (or OAR), the narrative and citation forms are the same. The word *former* is set in italics. Only a repealed or renumbered statute, not an amended statute, is referred to as “*former.*”

Former ORS 19.023(2)(a) (1995), *renumbered as* ORS 19.205(2)(a) (1997). (first reference; “1995” will usually refer to the year of the statute in effect when the facts of the case occurred (although the author may make a different choice, depending on context); “1997” refers to year that the statute was renumbered)

Former ORS 19.023(2)(a) (1995). (subsequent reference)

Former ORS 736.317 (1961), *repealed by* Or Laws 1967, ch 482, § 1. (first reference)

Former ORS 736.317 (1961). (subsequent reference)

When a statute has been renumbered or repealed, the author should cite the version in effect at the time of the events in the case, including subsequent history on the first reference and then including the year of that version in subsequent references.

d. Amended Statute Examples

ORS 308.370 - 308.375 (1987), *amended by* Or Laws 1991, ch 459, §§ 117-120. (citation form, first reference)

ORS 308.370 - 308.375 (1987). (citation form, subsequent reference)

NOTE: (1) The above examples for amended statutes require inclusion of the year parenthetically at the end of all citations (separated by a space). However, it also is acceptable to include a footnote at the outset of the opinion, after citing the older statute in full, that explains that all statutory citations that follow are to a particular year. In that event, it is not necessary to include the parenthetical year in subsequent references. (2) When setting out ORS citations or other authorities, be consistent in the use of punctuation, *e.g.*,

The state appeals from a pretrial judgment dismissing an indictment that charged defendant with manufacture of a controlled substance, ORS 475.992(1); delivery of a controlled substance to minor, ORS 475.999; and criminal conspiracy, ORS 161.450.

In general, when a statute has been amended, the author may: (1) cite the version in effect at the time of the events in the case; or (2) cite the current version, if the amendment does not affect the issue in the case. If choosing option (1), then include subsequent history on the first reference and include the year of the version being cited on subsequent references. If choosing option (2), then include a footnote on the first reference that sets out the subsequent history and explains that the current version is being used because the intervening amendment does not affect the analysis. For example,

¹ ORS 164.125 has been amended since defendant committed his crime; however, because those amendments do not affect our analysis, we refer to the current version of the statute in this opinion.

If a statute has been amended or renumbered more than once, then the best practice is to include the full subsequent history on the first reference or at least in a footnote (example: cite all amendments, not just the one at issue).

6. Oregon Evidence Code (OEC) (ORS chapter 40)

Always use the abbreviated form (OEC) in both narrative references and citations when referring to or citing a specific rule. Use “Oregon Evidence Code” (not “OEC”) when referring to the code as a whole. Do not cite the ORS number, *e.g.*,

OEC 801(3).

OEC 103 Commentary (1981).

Legislative Commentary to OEC 401, *reprinted in* Laird C. Kirkpatrick, *Oregon Evidence* § 401.02, Art IV-4 (4th ed 2002).

Parts of the Oregon Evidence Code suggest that * * *. (narrative form)

When quoting the Oregon Evidence Code, or when quoting a statute that quotes the Oregon Evidence Code, replace any ORS reference with the corresponding OEC rule number in brackets, *e.g.*,

OEC 405(2)(a) provides:

“In all cases in which character or a trait of character of a person is admissible under [OEC 404(1)], proof may also be made of specific instances of the conduct of the person.”

7. Oregon Rules of Civil Procedure (ORCP)

Always use the abbreviated form (ORCP) in both narrative references and citations when referring to or citing a specific rule. Use “Oregon Rules of Civil Procedure” (not “ORCPs”) when referring to the rules as a whole. Always add a space after the rule number when referring to a section of the rule, *e.g.*,

ORCP 71 B(1)(b)(i). [rule 71][section B][subsection (1)][paragraph (b)][sub-paragraph (i)].

ORCP 7 C(3)(a) to (c). (narrative form, when citing a sequence)

ORCP 7 C(3)(a) - (c). (citation form, when citing a sequence)

ORCP 7 C(3)(a) and (c). (narrative form, when referring to two paragraphs of the same rule)

ORCP 7 C(3)(a), (c). (citation form, when citing two paragraphs of the same rule)

Nothing in the Oregon Rules of Civil Procedure points to a contrary conclusion. (narrative form)

ORCP 71 B(1)(c) or ORCP 71 C (when citing two parts of a rule).

When citing the drafts, comments, and history of the ORCPs, cite the bound volumes, *i.e.*:

Council on Court Procedures, *4 Legislative History Relating to Promulgation of Oregon Rules of Civil Procedure (1/1/78 through 12/31/78)*, June 28, 1978, Draft and Proposed Comment to Rule 6, 33 (1979).

When citing the permanent comments to the enacted ORCPs, cite the Merrill handbook, *i.e.*:

Council on Court Procedures, Staff Comment to Rule 9, *reprinted in* Frederic R. Merrill, *Oregon Rules of Civil Procedure: A Handbook* 28-29 (1981).

8. Oregon Rules of Appellate Procedure (ORAP)

Always use the abbreviated form (ORAP) in both narrative references and citations when referring to or citing a specific rule. Use “Oregon Rules of Appellate Procedure” (not “ORAPs”) when referring to the rules as a whole, *e.g.*,

ORAP 9.15(1).

The Oregon Rules of Appellate Procedure set out a process for initiating a case.

NOTE: Follow the links at www.courts.oregon.gov to find the most current version of the Oregon Rules of Appellate Procedure, which occasionally are temporarily amended by Chief Justice-Chief Judge Order.

9. Oregon Administrative Rules (OAR)

Always use the abbreviated form (OAR) in both narrative references and citations when referring to or citing a specific rule. Use “Oregon Administrative Rules” not “OARs” when referring to the rules as a whole, *e.g.*,

OAR 253-004-0001. (narrative and citation form, when referring to or citing a specific paragraph)

OAR chapter 253, division 4. (narrative form, when referring to an entire division)

OAR chapter 253, division 4, Appendix 3. (narrative form, when referring to an appendix)

OAR ch 253, App 3. (citation form)

OAR 660-022-0077 to 660-022-0080. (narrative form when referring to a series)

OAR 660-022-0077 - 660-022-0080. (citation form when referring to a series)

OAR 435-001-0025 (May 12, 2002). (indicates that a rule has been amended)

Former OAR 255-80-005(2) (May 31, 1985). (indicates that a rule has been renumbered or repealed)

OAR 150-305.265(14)-(A). (when citing chapter 150, place hyphens and periods as published for each rule)

Nothing in the Oregon Administrative Rules suggests that * * *. (narrative form)

10. Uniform Trial Court Rules (UTCRC) / Supplementary Local Rules (SLR)

UTCRC 7.020(5). (narrative and citation form, when referring to or citing a specific rule)

Multnomah Circuit Court Supplementary Local Rule (SLR) 5.045(1). (first reference)

SLR 5.045(2). (short citation form)

The Uniform Trial Court Rules contain several provisions * * *. (narrative form)

11. Uniform Jury Instructions

a. Civil Instructions:

Uniform Civil Jury Instruction 10.10. (narrative form)

UCJI 10.10. (citation form)

b. Criminal Instructions:

Uniform Criminal Jury Instruction 3.1. (narrative form)

UCrJI 3.1. (citation form)

12. Agency Decisions

a. Workers' Compensation Board:

Edward D. Lucas, 41 Van Natta 2272, 2274-75 (1989), *rev'd on other grounds*, *Lucas v. Clark*, 106 Or App 687, 809 P2d 712 (1991).

b. Land Use Board of Appeals (LUBA):

Stefansky v. Grant County, 12 Or LUBA 91 (1984).

Holland v. City of Cannon Beach, ___ Or LUBA ___, ___ (LUBA No 02-060, Oct 1, 2002) (slip op at 10).

c. Employment Relations Board (ERB):

Jefferson County v. OPEU, 18 PECBR 285 (1999).

d. Employment Appeals Board (EAB):

Terrance E. Webb, EAB Decision 96-AB-876 (Apr 16, 1996).

13. Attorney General Opinions

a. Formal Attorney General Opinions:

35 Op Atty Gen 710 (1972).

47 Op Atty Gen ___ (No 8216, Sept 7, 1994). (slip opinion)

b. Letters of Advice (Informal Attorney General Opinions):

Attorney General Letter of Advice to Rep Clayton Klein (OP-4519)
(Dec 1, 2003).

14. Municipal Codes

Citation form will vary, depending on the code at issue. Check the official code or ordinance itself for its proper name and short citation form, *e.g.*, the Eugene Municipal Code provides for citation to “EC.” Otherwise, use the name of the code (or an abbreviation after the first reference or citation) and the number of the code provision, *e.g.*,

Eugene Code (EC) 3.005. (narrative and citation, first reference)

EC 3.005. (narrative and citation, subsequent reference)

Portland City Code (PCC) 14A.40.050. (narrative and citation, first reference)

PCC 14A.40.050. (narrative and citation, subsequent reference)

15. Legislative History

Senate Bill (SB) 123 (1997); House Bill (HB) 1234 (1997). (narrative form, first reference)

SB 123; HB 1234. (subsequent reference)

SB 123 (1997); HB 1234 (1997). (citation form)

HB 2759 (1993), -1 amendments (Apr 13, 1993).

Senate Joint Resolution (SJR) 5 (1997); House Joint Resolution (HJR) 10 (1997). (narrative form, first reference)

SJR 5 (1997); HJR 10 (1997). (citation form, first reference)

SJR 5; HJR 10. (narrative or citation form, subsequent reference)

Testimony, House Committee on Human Resources, HB 2762, Mar 17, 1981, Ex C (statement of Rep Bob Smith).

Tape Recording, House Committee on Judiciary, Subcommittee on Crime and Corrections, SB 833, June 9, 1993, Tape 126, Side A (statement of Sen Ron Cease).

Tape Recording, Senate Committee on Criminal Law and Procedure, SB 100, Mar 31, 1971, Tape 1, Side A (statement of Attorney General Joe Jones).

Audio Recording, House Committee on Judiciary, HB 2460, Apr 16, 2001, at 2:10.38 (comments of Rep Amy Smith and Rep Barbara Jones), <https://olis.leg.state.or.us> (accessed Jan 2, 2013).

Exhibit F, House Labor Committee, SB 89, June 15, 1983 (accompanying statement of BOLI representative Paul Smith).

Judgments/Enforcement of Judgments: Judgments Report (HB 2646), Oregon Law Commission, Feb 6, 2003, 12 (Judgments Report). [The parenthetical indicates the short title by which it will be referred.]

Minutes, Criminal Law Revision Commission, Jan 22, 1971, 12.

NOTE: For legislative committees, minutes should be cited as authority only to explain a committee vote or action taken, such as approving a bill with a do-pass recommendation. Any citation to discussion about a bill in the committee should be drawn from the audio recording of the hearing or work session, not the minutes.

Commentary to Criminal Law Revision Commission Proposed Oregon Criminal Code, Final Draft and Report § 122, 131 (July 1970).

Commentary to Criminal Law Revision Commission Proposed Oregon Criminal Procedure Code, Final Draft and Report § 28, 22 (Nov 1972).

Commentary § 29 at 7. (short citation form)

Legislative Comment 1 to ORS 72.7030, *reprinted in* Legislative Counsel Committee, Oregon’s Uniform Commercial Code with Comments and Index and Tables 101 (1962).

Legislative Comment 1 to ORS 72.7030 at 102. (short citation form)

16. Initiative Petitions, Ballot Measures, and Voters’ Pamphlets

Initiative Petition 136 (2001) (IP 136). (narrative form, first reference; citation form)

IP 136. (narrative form, subsequent reference; citation form)

Ballot Measure 40 (1996). (narrative form, first reference; citation form)

Measure 40. (narrative form, subsequent reference; short citation form)

Official Voters’ Pamphlet, General Election, Nov 7, 2000, 309. (citation form, first reference)

Voters’ Pamphlet at 310. (subsequent reference)

The voters’ pamphlet for the 2000 General Election suggests that * * *. (narrative form)

NOTE: The above examples refer to statewide measures. If citing a local measure, then follow the format set out above, but insert the appropriate local numbering, *e.g.*, Ballot Measure 10-06 (1992).

17. Sentencing Guidelines Implementation Manual

Oregon Sentencing Guidelines Implementation Manual 131 (1989).

18. Rules of Professional Conduct (RPC), Bar Rules of Procedure (BR), and American Bar Association (ABA) Standards

NOTE: Do not use “RPC” or “RPCs” when speaking generally about the Rules of Professional Conduct; instead, cite the rules separately.

a. Rules of Professional Conduct

The Bar’s complaint alleges that the lawyer violated Rule of Professional Conduct (RPC) 8.4(a)(3) (conduct involving dishonesty, fraud, deceit, or misrepresentation). (narrative form, first reference to any RPC)

The lawyer contends that he did not violate RPC 8.4(a)(3). (narrative form, subsequent RPC reference)

The lawyer contends that he did not violate any rule of professional conduct. (narrative form)

NOTE: The rule on pages 36 to 37 referring to the use of “*former*” with repealed and renumbered, but not amended, statutes, does not apply to rules of professional conduct. With rules of professional conduct, “*former*” is used to refer to amended, as well as repealed and renumbered, rules. If citing to a former rule, then include the year.

b. Bar Rules of Procedure

This is a reinstatement proceeding under Bar Rule of Procedure (BR) 8.8. (narrative form, first reference to any BR)

BR 10.1. (narrative form, subsequent reference; citation form)

c. ABA Standards

American Bar Association’s *Standards for Imposing Lawyer Sanctions* (1991) (amended 1992) (ABA Standards), Standard 5.21. (narrative or citation form, first reference)

ABA Standard 9.32(a). (narrative or citation forms, subsequent reference when citing a particular standard)

ABA Standards at 7. (citation form, subsequent reference when citing a particular page in the manual)

ABA Standard 9.22(i) (amended 1992). (narrative or citation form, subsequent reference when citing a standard contained in only the 1992 amendments)

NOTE: The copyright for the ABA Standards was updated in 2005, but the rules were not amended in 2005; therefore, the year for the amended version is 1992. The 1992 version is available online at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/corrected_standards_sanctions_may2012_wfootnotes.authcheckdam.pdf.

19. Briefs and Other Court Filings

The courts do not cite briefs in the instant case in their opinions; occasionally, however, an opinion might cite a brief in another case (for example, if the brief expanded on a legal theory that the court had addressed only briefly

in that other case). When citing a brief or any other official court filing, follow this format: Full name of the document, include the jump/pinpoint citation (if any), followed by the name of the case and its full citation (if rendered), and case number.

Appellant’s Opening Brief at 10, *State v. Doyle*, 213 Or App 456, 111 P3d 87 (2007) (CA A123456).

If citing an event in a register of actions in the Oregon eCourt Case Information system (OECI, register of actions for Oregon circuit courts):

Motion for Stay, Filed May 1, 2014, *State v. Adios* (CR456789)

General Judgment, Entered June 15, 2015, *State v. Adios* (CR456789)

NOTE: Use the OECI “Created Date” for court-issued entries such as orders or judgments (date of entry); otherwise, use the date in the OECI Date column (date of filing of a received filing).

B. Federal Citations

1. United States Constitution

The Fifth Amendment to the United States Constitution. (narrative form)

The Due Process Clause of the Fourteenth Amendment to the United States Constitution. (narrative form)

US Const, Amend V. (citation form)

US Const, Art I, § 2. (citation form)

2. Rules of Evidence and Procedure

a. Federal Rules of Evidence

FRE 410.

b. Federal Rules of Civil Procedure

FRCP 12.

c. Federal Rules of Criminal Procedure

FRCrP 12.

3. Public Laws and United States Code

Pub L 95-473, § 11503, 92 Stat 1445-46 (1978). (citation form)

42 USC § 1983 (1982); 15 USC §§ 2051, 2053 (1982). (citation form)

42 USC section 1983; 15 USC sections 2051 and 2053. (narrative form, first reference)

section 1983. (narrative form, subsequent reference) (the “s” in section is lowercase unless it starts the sentence)

NOTE: As with ORS citations, include the year only if not citing the version currently in force.

4. Legislative History

a. Committee Reports

HR Rep No 1395, 95th Cong, 2d Sess, *reprinted in* 1978 USCCAN 3009, 3018.

S Rep No 445, 87th Cong, 1st Sess (1961), 451-91. (if not in USCCAN)

b. Testimony

Hearings on SB 927 Before the Subcomm on Surface Transportation of the S Comm on Commerce, 90th Cong, 1st Sess, 23 (Aug 7, 1967) (prepared statement of Jim Doe, on behalf of the American Medical Association).

c. Congressional Record

116 Cong Rec S2024 (Jan 3, 1970).

5. Internal Revenue Code

IRC § 61 (1982). (citation form)

Internal Revenue Code (IRC) section 61 (1982). (narrative form)

IRC section 61. (narrative form, subsequent reference)

6. Tax Materials

a. Regulations

Treasury Regulation section 1.166-1(c). (narrative form)

Treas Reg § 1.72-16(a) (2001). (citation form)

20 CFR § 552.3 (2009). (citation form)

b. Determinations

Rev Rul 83-137, 1983-2 CB 41.

NOTE: Cite CB first, and then to IRB if CB unavailable.

Priv Ltr Rul 86-01-013 (Sept 30, 1985).

Tech Adv Mem 85-04-005 (Sept 28, 1984).

7. Uniform Laws

Uniform Child Custody Jurisdiction and Enforcement Act § 202 comment, 9 ULA 649, 674 (1997).

Uniform Probate Code § 2-101(b), 42-43 (9th ed 1990).

IV. Periodical Articles, Books, Treatises, Restatements, Etc.

In General

Cite the author's or editor's full name as found on the title page of the source being cited. For books that are compiled and edited by a named editor, place the editor's name where the author's name would normally be, followed by "ed." (including the period).

Cite the author's first name first. If there are up to three authors, then list them all in the same way. If four or more authors are listed, list the first author and use "*et al.*" For articles written by students, the author's name is used (if available), along with, *e.g.*, "Note," "Comment," or "Case Note."

When citing multivolume sets, place the volume number of the book before the title, not before the author's name. Include the edition and the year of the publication in parentheses at the end of the citation, *e.g.*,

Jacob Mertens, Jr., 8 *Mertens Law of Federal Income Taxation* § 32B:01 (rev 1999).

Use italics, not quotation marks, to indicate the name of a book, article, or treatise.

A. Periodical Articles

1. Articles Appearing in Journals, Newspapers, and Other Services

[Author], [*Name of article* (in italics)], [volume number] [periodical] [first page], [cited page(s)] ([date]), *e.g.*,

Pamela S. Karlan, *Contingent Fees and Criminal Cases*, 93 *Colum L Rev* 595, 602-03 (1993).

Laurence H. Tribe & Michael C. Dorf, *Levels of Generality in the Definition of Rights*, 57 *U Chi L Rev* 1057 (1990).

Justin Noval & Edward J. Imwinkelried, Jr., *Retrograde Extrapolation of Blood Alcohol Concentration*, 50 *No. 1 Crim Law Bulletin ART 7* (Westlaw 5, 10) (2014).

Alan Wayne Jones, *Evidence-Based Survey of the Elimination Rates of Ethanol from Blood with Applications in Forensic Casework*, 200 *Forensic Science International* 1, 14 (2010), <http://dx.doi.org/10.1016/j.forsciint.2010.02.021> (accessed Jan 15, 2015) (suggesting, from the results of studies, that experts use a range of elimination rates from 0.010 to 0.025 percent per hour).

2. Short Citation Form for Periodical Articles

After an authority has been cited fully in the text, use the following short citation form for subsequent references to the same authority:

[Author's last name], [Volume] [Periodical] at [page]:

Karlan, 93 Colum L Rev at 604.

NOTE: To determine the proper abbreviation for periodicals, first check the periodical itself to determine whether it provides for a particular citation form. If it does not, then follow *The Bluebook* abbreviations for periodicals.

3. Volume and Issue Numbers

Omit volume and issue numbers for newspapers and popular periodicals, because the numbers might not be easily found:

John Sedgwick, *The Complexity Problem*, *The Atlantic* 96 (Mar 1993).

B. Books and Treatises

NOTE: “Ed.” (with a period) refers to “editor”; “ed” (without a period) refers to “edition.”

1. Citation

[Author(s)], [Volume number (if applicable)] [*Title* (in italics)] [subdivision, chapter or section (if applicable)], [page(s)] ([Edition (if there is more than one edition)] [Year]), *e.g.*,

Wayne R. LaFare, 3 *Search and Seizure* § 7.1 (2d ed 1987).

Wayne R. LaFare, 3 *Search and Seizure* § 7.1(c), 17 (3d ed 1996).

Bryan A. Garner, *A Dictionary of Modern Legal Usage* 138-39 (1987).

Laird C. Kirkpatrick, *Oregon Evidence* § 401.02, Art IV-4 (4th ed 2002).

Webster's Third New Int'l Dictionary 930 (unabridged ed 2002).

Black's Law Dictionary 700 (7th ed 1999).

Noah Webster, 1 *An American Dictionary of the English Language* (unpaginated) (1828).

Merriam-Webster Unabridged Dictionary, <http://unabridged.merriam-webster.com/unabridged/capable> (accessed Feb 14, 2014).

Thomas W. Lippman ed., *The Washington Post Deskbook on Style* 49-55 (2d ed 1989).

William M. Collier, 3 *Collier on Bankruptcy* 506.04[1] (Lawrence P. King ed., 15th ed 1989).

Appraisal Institute, *The Appraisal of Real Estate* 89 (12th ed 2001).

Jacob Mertens, Jr., 8 *Mertens Law of Federal Income Taxation* § 32B:01 (rev 1999).

Jacob Mertens, Jr., 15 *Mertens Law of Federal Income Taxation* § 56:45 (Supp 2002). (when citing supplement)

Diagnostic and Statistical Manual of Mental Disorders 478 (5th ed 2013) (DSM-V). (first reference; include parenthetical if subsequent references or citations follow)

The Ethical Oregon Lawyer § 4.4 (OSB CLE 1991).

Paul Finkleman & Martin J. Hershock eds., *The History of Michigan Law* 169 (2006), available at https://books.google.com/books?id=jjSD45-P2_YC&pg=PR4&lpg=PR4&dq=history+of+michigan+law+finkleman+hershock&source=bl&ots=YvaGZ0ozQ1&sig=5iny5bYCRXKARtbFxFxJ2sRXpVI&hl=en&sa=X&ei=ecYRVdXAD8uOyAT1jICIDQ&ved=0CDMQ6AEwBg#v=snippet&q=1964%2C%20two%20years%20after&f=false (accessed Mar 24, 2015).

Mary Sue Henifin, Howard M. Kipen & Susan R. Poulter, *Reference Guide on Medical Testimony*, in *Reference Manual on Scientific Evidence* 439, 481 (Federal Judicial Center ed., 2d ed 2000).

NOTE: It is also acceptable to cite a source with multiple authors where saving space is desired by using just the first author's last name followed by *et al*, e.g.,

Henifin *et al*, *Reference Guide on Medical Testimony*, in *Reference Manual on Scientific Evidence* 439, 481 (Federal Judicial Center ed., 2d ed 2000).

2. Short Citation Form

[Author's last name], [Volume number (if applicable)] [*Title* (in italics) (shorten title if necessary)] [subdivision, chapter or section (if applicable)] at [page(s)], *e.g.*,

LaFave, 3 *Search and Seizure* § 7.1 at 356.

Garner, *Modern Legal Usage* at 378-79.

Webster's at 1935.

DSM-V at 480.

C. Restatements

Restatement (Second) of Torts section 847A comment c (1974). (first narrative reference)

Restatement section 847B. (subsequent narrative form)

Restatement (Second) of Torts § 847A comment c (1974). (first citation reference)

Restatement § 847B. (subsequent reference, short citation form)

D. Others

1. American Jurisprudence

Reformation of Instruments, 45 Am Jur § 66 at 436 (1958).

2. American Law Reports

William B. Johnson, Annotation, *Use of Plea Bargaining or Grant of Immunity as Improper Vouching for Credibility of Witness in Federal Cases*, 76 ALR Fed 409 (1986).

Johnson, 76 ALR Fed at 415. (short citation form)

3. Miscellaneous Tax Materials

- Tax Services

Sales and Use Taxes: General Principles, 1300 Tax Mgmt (BNA) ¶ 1300.09.C3 (2000).

QUOTATION

In General

Quotations must duplicate the original material, including spelling, use of uppercase, and formatting (*e.g.*, indents and tabs). All punctuation is placed inside the quotation marks, with the exceptions of colons, semicolons, and question marks that do not appear in the original. Permissible changes are set out in this section.

Quoted material that contains 50 or more words is placed in block form. Quoted material that contains 49 or fewer words may be placed in block form for emphasis. Block quotations are single spaced, double indented, and enclosed within quotation marks.

In a narrative context, the citation (aside from the case title) may follow the quotation. For example,

The petitioner included discussion from *Smith v. Jones*, where the court stated, “We don’t know what they were thinking.” 123 Or App 456, 460, 999 P3d 789 (2015). While mildly amusing, that did not further his argument.

Words that are used to show special expression or give special effect, such as slang words, words used in an ironic sense, philosophical terms, terms of art, etc., can be used within quotation marks. If the same phrase is used repeatedly, then those same quotation marks could become distracting, so an author should consider whether or not to repeat them.

I. Citations, Parenthetical Phrases, and Footnotes

A. Placement

When setting out a block quotation, the citation and parenthetical phrases (if any) are placed flush left on the next line with a double space between the quotation and the citation, *e.g.*,

1. Citation

“Defendant, of course, may argue that the safeguard for employees exceeds the ordinary standard of due care considering the nature of the risk and the foreseeability of injury. The court may explain the governmentally prescribed safeguard to the jury in an instruction that the jury may consider the safeguard in determining whether the defendant exercised due care.”

Shahtout, 298 Or at 605-06.

2. Parenthetical Phrase

ORS 19.205(2)(a) provides, in part:

“An order affecting a *substantial* right, and which in effect determines the action * * *.”

(Emphasis added.)

3. Order of Citations and Parentheticals

As stated in *Welker*,

“[t]his court has held that a motion is controlled by its substance, not its caption. More specifically, this court has held that a motion was a motion for new trial although it was not denominated as such. Under ORS 19.270(4)(a), the trial court must have intended to enter an appealable judgment at the time of the filing of the notice of appeal.”

332 Or at 313 (citations omitted).

4. Footnotes

The preferred method for quoting text that contains a footnote is to omit the footnote and indicate so by parenthetical, *e.g.*,

“The difficulty with that argument is that the state has not established the requisite nexus between appellant’s mental illness and the potential substance abuse or failure to appreciate the risks of such abuse.”

State v. Linde, 179 Or App 553, 561, 32 P3d 78 (2002) (footnote omitted).

To retain a footnote within a blocked quotation, drop the quoted, blocked footnote under it, separated by a one-inch line, then proceed with new text (that is, do not set the quoted footnote as a new footnote at the bottom of the page), *e.g.*,

As this court explained in *Kambury v. DaimlerChrysler Corp.*, 173 Or App 372, 387, 21 P3d 1089 (2001) (Edmonds, P. J., dissenting),

“[b]ut the question is one of Oregon law, not federal law, the federal court’s decision was the earlier of the two, and it is the Oregon court’s decision—not that of the Ninth Circuit—that is binding for purposes of the certification law.⁸ It follows from the foregoing that this court should not accept certification of the first question, unless some other discretionary factor dictates a contrary conclusion.

⁸ We recognize that the district court appears to be concerned about an inconsistency in decisions on this subject. However, our focus in searching for controlling precedent is narrower than the focus of the district court. The Oregon Court of Appeals decision in [*Korbut*] is “controlling precedent” for the purposes of ORS 28.200 [the statute authorizing answers to questions of law certified by other courts] and our exercise of discretion under that statute.”

It is unclear from the opinion in *Western Helicopter Services* whether the Supreme Court was telling the United States District Court that it should follow Oregon law rather than the federal cases interpreting Oregon law or whether the court was in fact affirming that *Korbut* was controlling precedent on the issue presented by the certified question.

5. Block Quotations Within Block Quotations

When formatting a second level of blocked quoted text within blocked quoted text, use the standard indent for the first level of quotation, and then for the internal quoted text, use a double indent for both the right and left margins.

“the state must prove that the defendant’s consent was independent of, or only tenuously related to, the illegal police conduct. As the court explained,

“‘consent is insufficient to establish the admissibility of evidence from a warrantless search if the state cannot prove that the consent

was independent of, or only tenuously related to, any preceding violation of the defendant’s rights under Article I, section 9. Unless the state is able to make that showing, then the defendant’s consent cannot operate to validate a warrantless search because the defendant’s consent *itself* derived from a violation of the defendant’s rights under that state constitutional provision.”

Jones, 265 Or App at 678 (quoting *State v. Yunker*, 330 Or 388, 395, 457 P3d 890 (2013) (emphasis in *Yunker*)).

B. Use of Parenthetical Phrases With Quotations Within Text

If internal quotation marks or brackets are omitted, so indicate, *e.g.*,

“By looking to only the current employment of the land, the law ignores the past and any intentions with regard to future use.” *Everhart v. Dept. of Rev.*, 15 OTR 76, 81 (1999) (internal quotation marks omitted).

or

In *Everhart v. Dept. of Rev.*, 15 OTR 76, 81 (1999), the court rejected that argument, stating, “By looking to only the current employment of the land, the law ignores the past and any intentions with regard to future use.” (Internal quotation marks omitted.)

NOTE: It is correct to add either a parenthetical indicating that internal quotation marks are omitted or to leave in the quotation marks and add a parenthetical indicating the source that you are quoting, but not both.

Oppressive conduct is

“burdensome, harsh and wrongful conduct; a lack of probity and fair dealing in the affairs of the company to the prejudice of some of its members; or a * * * departure from the standards of fair dealing, and a violation of fair play on which every shareholder who entrusts his money to a company is entitled to rely.”

Polk v. Hergert Land & Cattle Co., 5 P3d 402, 404 (Colo App 2000) (quoting *Jorgensen v. Water Works, Inc.*, 218 Wis 2d 761, 783, 582 NW2d 98, 107 (Wis App 1998) (brackets omitted)).

Include a parenthetical phrase to differentiate emphasis being added to quoted material as opposed to emphasis that was already in the original text, *e.g.*,

“While mass-appraisal techniques may place heavy reliance upon cost, *cost alone* is not determinative of market value.” *Su v. Dept. of Rev.*, 15 OTR 305, 308 (2001) (emphasis added).

“ORS 653.295, however, provides no remedy for *discharge* of an employee * * *.”
Dymock v. Norwest Safety Protective Equipment, 172 Or App 399, 406, 19 P3d 934
(2001) (emphasis in original).

When the material being quoted contains a quotation, the text of which is emphasized, include a parenthetical phrase that notes the source of the emphasis (use emphases if plural), *e.g.*,

As in *Gladhart v. Oregon Vineyard Supply Co.*, this court again repeats that

“the *Brown* court ‘only acknowledged that perhaps strict liability should require the *danger* to be one endangering human life or safety, a different question from whether tort recovery should be limited to such an *injury*,’ and that ‘[t]hat difference determines the decision in the present case.’”

164 Or App 438, 451-52, 994 P2d 134 (1999) (quoting *Russell v. Ford Motor Company*, 281 Or 587, 593-94, 575 P2d 1383 (1978) (emphases in *Russell*)).

“Apparent authority is created ‘*only by some conduct of the principal* which, when reasonably interpreted, causes a third party to believe that the principal consents to have the apparent agent act for him on that matter.’” *Badger v. Paulson Investment Co., Inc.*, 311 Or 14, 24, 803 P2d 1178 (1991) (quoting *Mattson v. Commercial Credit Business Loans*, 301 Or 407, 422, 723 P2d 996 (1986) (emphasis added)).

Badger v. Paulson Investment Co., Inc., 311 Or 14, 24, 803 P2d 1178 (1991) (“Apparent authority is created ‘*only by some conduct of the principal* which, when reasonably interpreted, causes a third party to believe that the principal consents to have the apparent agent act for him on that matter.’” (Quoting *Mattson v. Commercial Credit Business Loans*, 301 Or 407, 422, 723 P2d 996 (1986) (emphasis in *Mattson*)).).

Multiple notations about a quotation may follow any order that clearly communicates whether and how the text was altered. If in doubt, choose this order: “in original,” “omitted,” and “added.” It is also acceptable, to improve readability, to use “first emphasis added; second emphasis in original,” etc.

In particular, petitioner focuses on the following emphasized statements that appear in the form under the heading “Information Considered at the Hearing”:

“Discovery is not permitted. Requests that the Board research and obtain information you want considered cannot be honored. It is your responsibility to provide that information. *You do not have the right to call witnesses or to cross-examine witnesses who have provided information to the Board.*”

(Underscoring in original; footnote and boldface omitted; emphasis added.)

Consistently with those principles, the court more recently summarized the requirements of ORS 136.440 as follows:

“By its terms, ORS 136.440(1) requires only that the corroborating evidence tend to connect the defendant with the commission of the offense, here, aggravated murder. That statute does not require corroboration of a particular *theory* of the commission of the offense.

“It is not necessary that the corroborating evidence be direct and positive; it may be circumstantial. Nor is it necessary that there be independent corroborating evidence with respect to every material fact necessary to be established to sustain a conviction for the commission of a crime. Where there is any evidence apart from that of the accomplice tending to connect the defendant with the commission of the crime, the question of whether the accomplice’s testimony is corroborated is one for the trier of fact.”

State v. Walton, 311 Or 223, 242-43, 809 P2d 81 (1991) (emphasis in original; citations omitted).

It depends, the court stated, on the nature of the restriction—in particular, whether the restriction is on the contribution itself:

“If it can be shown that financial contributions and expenditures are the free expression of opinion, laws limiting such activities run afoul of the constitutional protection. But lawmakers might choose to impose requirements distinct from contribution or expenditure limitations (*e.g.*, *requirements of disclosure of financing sources and the extent of any gift*) as well as various sanctions (*e.g.*, civil or criminal penalties, disqualification from the ballot or Voters’ Pamphlet, and the like) and their choice may not *necessarily* offend the constitutional requirement.”

Id. at 523 (first emphasis added; second emphasis in original; internal quotation marks omitted).

When a citation includes both a parenthetical phrase *and* subsequent history, place the parenthetical after the subsequent history, *e.g.*,

Defendant notes that the fact that a search occurred cannot, alone, support an inference that the searching officers had subjective probable cause. *See State v. Bickford*, 157 Or App 386, 390 n 1, 970 P2d 234 (1998), *rev den*, 329 Or 589 (2000) (“If a trial court could infer subjective probable cause from the arrest, we would never need to inquire into subjective probable cause for the arrest.”).

When a parenthetical contains a quotation that has been altered, include an internal parenthetical and adjust the punctuation accordingly, *e.g.*,

The court held that claims of increasing pain due to injury, standing alone, were insufficient to establish an aggravation claim. *SAIF v. Walker*, 330 Or 102, 116, 996 P2d 979 (2000) (stating that ORS 656.273(1) requires “proof, based upon *medical evidence* supported by objective findings” (emphasis added)).

The court held that claimant’s claims of increasing pain due to the injury, standing alone, were insufficient to establish an aggravation claim. *SAIF v. Walker*, 330 Or 102, 116-17, 996 P2d 979 (2000) (“Under ORS 656.005(19), however, such ‘objective findings’ may *include* evidence of worsened symptoms.” (Emphasis in original.)).

When appending information to a citation, using terms such as cited in, quoted in, construed in, etc., those words are italicized,

Keenan v. Norris-Lampe, 330 Or 456, 777 P2d 897 (1999), *construed in Bennett v. Bauman*, 333 Or 566, 790 P2d 654 (2001).

Citing ORS 136.425 (2005), *amended by* Or Laws 2009, chapter 875, section 1, defendant contends that, by itself, a confession is insufficient to support a conviction for an offense.

When including works that the primary authority quotes, discusses, or mentions, the lead-in words should be indicated parenthetically and not italicized, *e.g.*,

See Keenan v. Norris-Lampe, 330 Or 456, 777 P2d 897 (1999) (citing *Bennett v. Bauman*, 329 Or 566, 770 P2d 654 (1998)); *see also Brown v. Uphoff*, 381 F3d 1219, 1226 (10th Cir 2004) (“Unlike *Gideon, Crawford* does not ‘alter our understanding of what constitutes basic due process,’ but merely sets out new standards for the admission of certain kinds of hearsay.” (Quoting *United States v. Mora*, 293 F3d 1213, 1219 (10th Cir 2002.))).

For more on parentheticals, refer to pages 18 to 19.

II. Use of Uppercase, Brackets, and Ellipsis Within Quotations

A. Use of Uppercase

Generally, the first letter of a quotation that reads as a full sentence must be in uppercase, *e.g.*,

The trial court issued a letter opinion that addressed defendant’s motion as follows:
“There is no evidence supporting the first change.”

The witness testified, “Although I am not a doctor, I play one on TV.”

Sometimes this requires changing the initial letter of a quotation to uppercase, *e.g.*,

The court observed, “[U]npreserved error will ordinarily not be reviewed on appeal.”

The examining physician’s report declared, “[C]laimant was medically stationary as of February 12, 1992.”

In the following example, the use of a bracketed lowercase letter indicates that the initial letter was in uppercase in the original, *e.g.*,

Incorrect: Defendant argued, “[t]he trial court erred in excluding witnesses from the courtroom.”

Correct: Defendant argued, “The trial court erred in excluding witnesses from the courtroom.”

EXCEPTION: When a quotation that reads as a full sentence is incorporated into the grammatical structure of the sentence (often preceded by “that”), do not uppercase the first letter and use brackets if the first letter of the quotation was uppercase in the original, *e.g.*,

The court observed that “[u]npreserved error will ordinarily not be reviewed on appeal.”

NOTE: For using uppercase after colons, refer to page 79.

B. Use of Brackets

The use of brackets in quoted material indicates that something has been changed, modified, or deleted from how it was originally published.

1. Indicate a Change in Uppercase or Lowercase

You should “[p]lace commas and periods inside quotation marks.”

2. Alter a Word

“Plaintiff place[s] substantial weight on its belief that the legislature intended to restore the common practice of exempting brooder houses.”

The prohibition was enacted to “ensure[] that dogs will have their day.”

3. Indicate Substituted or Added Words

The court’s “jurisdiction [is limited] to determining whether petitioners’ assessment may be spread over a period of at least 10 years.”

4. Add Punctuation to a Quotation Where There Previously Was No Punctuation and the Punctuation Is Not Part of the Larger Sentence

The standard of care applicable to physicians requires the use of “that degree of care, skill[,] and diligence” as is used by physicians in the same or similar community.

The trial court concluded that “there is no issue of material fact,” but it also concluded that defendant was not entitled to judgment as a matter of law. [No comma in original; brackets not needed, because comma is part of larger sentence.]

5. Modify Punctuation that Appears in the Original Text

Punctuation in quoted text can be replaced with other punctuation with the use of brackets:

Original: “The Court of Appeals has 13 members, but they sit in panels of three.”

New: “The Court of Appeals has 13 members[;] * * * they sit in panels of three.”

If quoted material ends before the new sentence ends, then punctuation that is appropriate for the new sentence can be included inside the quotation marks:

Original: Defendant’s argument is beyond reproach and compels us to strike his brief and order him to pay petitioner’s costs.

New: In *Jones*, the court characterized the defendant’s argument as “beyond reproach,” struck his brief, and ordered him to pay the petitioner’s costs.

If omitting quoted material at the end of a quoted sentence, but ending the new sentence with the partially quoted material, denote the omitted quoted material before the period in the new sentence with an ellipsis:

Original: A party shall make a notation of exception either orally on the record or in a writing filed with the court.

New: ORCP 59 H(2) provides that “[a] party shall make a notation of exception either orally on the record or in a writing * * *.”

6. Insert a Citation Within a Quotation

When quoting text that refers to a case by use of *supra* rather than a citation, add the citation in brackets, *e.g.*,

“This court has declared that evidence is suppressed for violations of the Oregon Constitution ‘to preserve * * * rights to the same extent as if the government’s officers had stayed within the law.’ *State v. Davis*[, 295 Or 227, 234, 666 P2d 802 (1983)].”

Use a short citation form if the case has already been cited in full, *e.g.*,

“A discovery rule cannot be assumed, but must be found in the statute or limitations itself. *Huff*[, 322 Or at 462].”

When modifying quoted material to add emphasized text, emphasize the brackets themselves, in addition to the inserted emphasized text, only when the words on both sides of the brackets are already emphasized, *e.g.*,

Correct: “*Plaintiff’s [first] argument * * **”

Correct: “Plaintiff’s [*first*] argument * * *”

Correct: “Plaintiff’s [*first] argument * * **”

Incorrect: “*Plaintiff’s [first] argument * * **”

Incorrect: “Plaintiff’s [*first] argument * * **”

7. Indicate a Significant Mistake in the Original

“[*Sic*]” is used to indicate that the author being quoted has used a word incorrectly or has used an incorrect spelling of a word within the context of

the sentence that confuses or changes the meaning of the sentence. Obvious typographical errors may be silently corrected, but any idiosyncrasy of spelling (particularly from older works) is preserved, *e.g.*, “defence.” When using *[sic]*, it is italicized, enclosed in brackets, and placed after the uncorrected word, *e.g.*,

“The court’s rational *[sic]* for its decision was based entirely on legal precedent.”

“We are going to precede *[sic]* with our plans for the law suit.”

(Here, the use of *[sic]* signals the reader that “rational” should actually read “rationale”; “precede” should read “proceed.”)

Bracketing and correcting an error in quoted material instead of using *[sic]* is usually sufficient as long as it does not alter the meaning. The use of *[sic]* should be avoided to point out minor grammatical errors, to indicate disagreement with a word’s usage, or to appear highhanded. Instead, the preferred method is to silently correct or to use brackets, *e.g.*,

Incorrect: “The company, on its own volition, intervened in the trial Court *[sic]* proceedings * * *.”

Correct: “The company, on its own volition, intervened in the trial [c]ourt proceedings * * *.”

Correct: “The company, on its own volition, intervened in the trial court proceedings * * *.”

Incorrect: “The lab technician dropped the vile *[sic]* of blood.”

Correct: “The lab technician dropped the vi[al] of blood.”

Correct: “The lab technician dropped the vial of blood.”

NOTE: Where a word or sentence would be correct either way, do not use *[sic]*.

C. Use of Ellipsis

1. Partial Omission

Use three asterisks (not periods), separated by spaces, to indicate omission of a word or words within a sentence, omission of sentences within a block quotation, and omission of text after a subsection number, *e.g.*,

The claimant seeks compensation “for mental and emotional distress and * * * damages.”

In amending ORS 656.273(1) in 1995, the legislature “neither repealed nor amended ORS 656.273(8) * * * but it may have changed how ORS 656.273(8) is applied.”

When quoting a full sentence except the end, use three asterisks, followed by a period, to indicate omission of the end of the sentence:

“The evidence directly establishes only the truth of the primary fact or facts from which an inference may be derived * * *.”

EXCEPTION: If quoting a full sentence except the end *and* the quoted material originally ended with a punctuation mark, then use only a bracketed period to indicate the change of punctuation (and, by inference, the end of the sentence):

“A court may consider unpreserved error under the plain error doctrine only if the error is one of law[.]” (period replaces semicolon and the remainder of the sentence)

When including quoted material within a sentence and the new sentence ends before the quoted material ended, an ellipsis is not needed:

Correct: If reasonable minds can disagree, then “any error is not plain.”

Incorrect: If reasonable minds can disagree, then “any error is not plain * * *.”

Use three asterisks (not followed by a period) to indicate omission of one or more sentences at the end of a paragraph within (as opposed to at the end of) a block quotation:

“The majority’s reading of the statute requires us to make two leaps of faith. The first leap is that, in 1965, the legislature used ‘gear or equipment’ to mean exactly what ‘appliance’ meant between 1921 and 1965. The second leap of faith is that the terms ‘boats, fishing gear and vehicles’ mean exactly what ‘gear or equipment’ means in ORS 506.655 * * *. * * *

“We decline to take those leaps for several reasons.”

NOTE: In the preceding example, the first ellipsis indicates that a sentence otherwise quoted in full has been ended prematurely. The second ellipsis indicates that an additional sentence or sentences has been omitted.

Omission of text after a subsection number:

“(1) As used in ORS 308A.050 to 308A.128, ‘farm use’ means the current employment of land for the primary purpose of obtaining a profit in money by:

“(a) * * * harvesting and selling crops.”

A block quotation that starts somewhere other than the beginning of the quoted sentence or paragraph may be treated a few different ways, depending on the author’s use of the quoted material.

An ellipsis is not necessary to begin a quotation that starts somewhere other than the beginning of the sentence or paragraph, *e.g.*,

The issue in *Merriweather* was as follows:

“[W]hether a circuit court order compelling witnesses to appear and testify before a grand jury was appealable under ORS 19.205(4) as the product of a ‘special statutory proceeding.’”

The court has previously explained that

“neither ORS 279.340 nor any other provision setting out requirements for hours of labor by public employees, ORS 279.334 - 279.342, expressly states what is meant by the phrase ‘directly employed’ or indicates the categories of persons to whom the phrase applies.”

Place the beginning of a block quotation flush left when the original quoted material is not the first sentence of a paragraph, *e.g.*,

As this court has stated before,

“[e]ven if that assumption is accurate, it is insufficient because even in a high crime neighborhood unprovoked flight does not invariably lead to reasonable suspicion * * *. Like unprovoked flight itself, presence in a high crime neighborhood is a fact too generic and susceptible to innocent explanation to satisfy the reasonable suspicion inquiry.”

Do not use an ellipsis if quoting only part of a sentence, *e.g.*,

Again, the legislature expressly provided that those actions be “commenced not later than two years after the date on which the plaintiff first discovered, or in the exercise of reasonable care should have discovered,” the death, injury, or disease.

Do not use an ellipsis to denote the omission of a citation or footnote. Instead, use “citation omitted” or “footnote omitted” in a parenthetical.

When quoting only part of a statute, rule, etc., use “in part,” *e.g.*,

ORS 305.440 provides, in part, “If no appeal is taken to the Supreme Court, the decision of the court shall constitute a final determination of the matter.”

2. Block Omission

Use five asterisks to indicate omission of a block of text such as paragraphs or sections, but not to indicate an omission of additional material after an ending paragraph, *e.g.*,

OAR 635-005-0180 provides, in part:

“It is unlawful for commercial purposes to take, land, or possess sea urchins:

“* * * * *

“(3) Without first obtaining a permit * * *.”

NOTE: If the original has additional text, it is not necessary to add three asterisks following the period.

STYLE GUIDE

In General

This section addresses issues of word treatment, grammar, punctuation, and usage that arise frequently in opinion drafting. It is not exhaustive. Grammar and usage are not exact sciences; there are many questions of style about which reasonable minds can differ. To promote consistency, however, the courts generally follow the conventions outlined below.

Other Resources

The courts use the following reference works (which also have updated editions) to resolve style issues not addressed in the *Oregon Appellate Courts Style Manual* (Updated 2017).

- *Webster's Third New Int'l Dictionary* (unabridged ed 2002).

For questions regarding spelling, word usage, or proper hyphenation when dividing words, the appellate courts adopted *Webster's*, in 1993, as the official dictionary.

- *The Chicago Manual of Style* (14th ed 1993).

This reference work addresses many grammatical standards and punctuation issues not covered here.

- Bryan A. Garner, *A Dictionary of Modern American Usage* (1998).

This work explains many principles of grammar and punctuation. It is also a very helpful guide to word usage.

- Bryan A. Garner, *A Dictionary of Modern Legal Usage* (2d ed 1995).

This is a helpful guide to modern legal usage. It also addresses many general questions of grammar and punctuation.

- William A. Sabin, *The Gregg Reference Manual* (9th ed 1999).

Readily available desktop reference book.

I. Spelling, Font, and Treatment of Words

A. Use of Italics and Roman Typeface

1. Foreign Words

Some foreign words and phrases commonly used in legal writing are not italicized, *e.g.*,

| | | |
|------------|---------------|--------------|
| ad hoc | etc. | pro tempore |
| ad hominem | habeas corpus | quid pro quo |
| ad valorem | mandamus | remitteretur |
| de facto | per curiam | subpoena |
| en banc | pro rata | vice versa |

Other less common foreign words and phrases that are italicized include the following. When using such words in the body of an opinion, use the periods and diacritical marks as set out below.

| | | |
|--|----------------------|----------------------------|
| <i>a priori</i> | <i>i.e.</i> | <i>quantum meruit</i> |
| <i>ab initio</i> | <i>id.</i> | <i>quantum valebant</i> |
| <i>ad litem</i> | <i>in camera</i> | <i>quo warranto</i> |
| <i>amicus curiae / amici curiae</i> | <i>in limine</i> | <i>res ipsa loquitur</i> |
| <i>arguendo</i> | <i>in re</i> | <i>res judicata</i> |
| <i>certiorari</i> | <i>in toto</i> | <i>respondeat superior</i> |
| <i>contra</i> | <i>inter alia</i> | <i>scienter</i> |
| <i>coram nobis</i> | <i>ipse dixit</i> | <i>sic</i> |
| <i>de novo</i> | <i>ipso facto</i> | <i>sine qua non</i> |
| <i>dictum</i> | <i>non sequitur</i> | <i>stare decisis</i> |
| <i>dubitante</i> | <i>nunc pro tunc</i> | <i>sua sponte</i> |
| <i>duces tecum</i> | <i>per se</i> | <i>sub silentio</i> |
| <i>e.g.</i> | <i>post hoc</i> | <i>ultra vires</i> |
| <i>et al.</i> | <i>prima facie</i> | <i>vice</i> |
| <i>et seq.</i> | <i>pro hac vice</i> | <i>vis-à-vis</i> |
| <i>ex parte</i> | <i>pro se</i> | <i>viz.</i> |
| <i>ex post facto</i> , but Ex Post Facto Clause | <i>qua</i> | <i>voir dire</i> |

2. Signals

Introductory signals such as *cf.*, *accord*, *see*, *e.g.*, *compare/with*, and *see generally* are italicized. “See” is not italicized when it functions as a verb and not as a signal, *e.g.*,

For discussion on the merits, see *Smith*, 300 Or App at 150.

3. Case Names and Other Authorities

Case names are italicized, as are the titles of books and other authorities. Please refer to the Citation Section for examples.

When a case or other authority takes a possessive ending, the apostrophe and “s” are not italicized:

Miranda’s holding has been called into question.

B. Use of Uppercase and Lowercase

1. Use Uppercase for the Following:

- a. Proper Names
- b. Complete Official Titles of a Public Official or Entity
(but not Abbreviated Titles), *e.g.*,

Uppercase:

Alaska Supreme Court
Appellate Commissioner
Assistant Attorney General John Jones
Attorney General
Board of Parole and Post-Prison Supervision
City of Eugene
Clackamas County District Attorney’s Office
Criminal Law Revision Commission
Department of Revenue
Deputy Sheriff Stanley
Director of the Department of Consumer
and Business Services
Governor
House of Representatives
Judge Atwater
Multnomah County Circuit Court
Officer Krupke
Oregon Court of Appeals/Court of Appeals
Oregon Legislative Assembly/
1997 Legislative Assembly
Oregon State Bar
Oregon Supreme Court/Supreme Court
Magistrate Jones
Portland Police Officer

Not Uppercase: (exceptions noted)

the court
the commissioner
assistant attorney general
the Attorney General (exception)
the board
the city
the district attorney’s office
the commission
the department
the deputy

the director
the Governor (exception)
the House (exception)
the judge
the court, or the circuit court
the officer
the court

the legislature
the Bar (exception)
the court
the magistrate
the officer

| | |
|---|---------------------------|
| Secretary of State | the secretary |
| Representative Smith | the representative |
| Salem-Keizer School District | the district |
| Senate | the Senate (exception) |
| Senator Jones | the senator |
| State of Oregon | the state |
| Oregon Tax Court/Tax Court | the court |
| United States Court of Appeals for the Ninth Circuit | Ninth Circuit (exception) |
| United States Supreme Court | the Court (exception) |
| Washington County Jail | the jail |
| Workers' Compensation Board | the board |

NOTE: In state jurisdictions having more than one appellate court at the same level, do not use uppercase for any shortened version of the name of that court. For example, the full form “California Court of Appeal, First Appellate District” uses uppercase, but the shortened form “court of appeal” does not. (There is no “s” after “appeal” for the California courts of appeal.) Similarly, “New York Supreme Court, Appellate Division, Third Department” uses uppercase, but the shortened form “supreme court” does not. (In New York, the Court of Appeals is the highest court, while the appellate divisions of the supreme court are the intermediate appellate courts.) However, it is permissible to use uppercase for shortened names of federal appellate courts, *e.g.*, the Ninth Circuit.

- c. Months and Days of the Week (usually written in month-day-year sequence), *e.g.*,

He filed the motion on Monday, January 23, 1993.

The action occurred in November 2013.

Defendant appeals from the January 16, 1994, order.

- d. Full Title of a Constitution, Constitutional Amendment, or Clause of a Constitution, *e.g.*,

Article I, section 9, of the Oregon Constitution (but “state constitution”)
Fifth and Fourteenth Amendments to the United States Constitution
(but “federal constitution”)

Contract Clause

dormant Commerce Clause

Due Process Clause

Ex Post Facto Clause

Privileges and Immunities Clause

Proportionality Clause

In the phrase “Oregon and United States constitutions,” do not uppercase “constitutions,” because the full title of neither document is being used. Note that either of the following formulations is preferred: “state and federal constitutions” or “the Oregon Constitution and the United States Constitution.”

e. “En Banc” and “Per Curiam” on Title Pages

NOTE: When used within the text on an opinion, those terms do not start with uppercase letters, *e.g.*, “The Court of Appeals, sitting en banc, reversed.”

f. “Intoxilyzer” or “Breathalyzer”
(Those are proper names for particular breath testing equipment.)

“Ziploc” or “Taser” (trademarked names)
(but zippered bag or stun gun)

g. “Class” or “Count”
(When referring to misdemeanor or felony charges), *e.g.*,

Class A felony

Count 1 of the indictment

Counts 1 and 2

h. “Schedule”
(When referring to drugs), *e.g.*,

Schedule I drug

i. “Act” or “Code”
(When referring to the full title of specific Acts or Codes), *e.g.*,

The Oregon Condominium Act specifically lists those conditions. The act does not set out the condition on which appellant relies.

The Bankruptcy Code provides for that situation. The code further provides a remedy in the event of a violation.

j. Particular Sections of the Oregon Revised Statutes Identified Collectively, *e.g.*,

Civil Code

Criminal Code

Oregon Evidence Code

Oregon Public Records Law

Unlawful Trade Practices Act

Workers’ Compensation Law

k. Social Security

SSA
Social Security number
Her income consisted of Social Security and wages from part-time employment.

2. Do Not Use Uppercase for the Following:

a. Generic Terms, *e.g.*,

“federal” or “state,”

as in

the state
state constitution
federal constitution
statute of frauds
statute of limitations

BUT do use uppercase when part of a full proper name, *e.g.*,

Federal Land Bank
State of Oregon

b. The Words “chapter” or “section”
(When referring to a specific chapter or section within a sentence), *e.g.*,

ORS chapter 10; Article I, section 9.

But

Chapter 7 (when referring to the Bankruptcy Code)

c. The Terms “x-ray,” “horizontal gaze nystagmus,” “administrative law judge,” and “driving under the influence”

A horizontal gaze nystagmus (HGN) test

The doctor ordered x-rays of the claimant’s lower back.

The administrative law judge (ALJ)

He was convicted of driving under the influence (DUII).

d. The Seasons or Centuries

It is now okay to wear white in the fall after Labor Day!

In the eighteenth century, women could wear white only as a petticoat.

She was convicted of wearing a red petticoat in the fall of 1858. (or, fall 1858)

e. The Words “website” or “internet”

C. Numbers and Dates

In General

Numbers one through nine are spelled out when used in text, except when listing a series of like objects, *e.g.*,

Judges from five states came to the conference: 5 from Washington, 2 from California, 10 from Oregon, 6 from Idaho, and 1 from Alaska.

All numbers after nine are expressed as numerals, except when they begin a sentence, *e.g.*,

Thirty-four judges attended the conference.

Defendant raises 10 assignments of error.

Very large numbers are expressed in figures followed by million, billion, etc., *e.g.*,

5 million people; 2 billion particles; \$10 million

All ordinal numbers (*i.e.*, numbers that measure position) are spelled out when used in narrative, *e.g.*,

Plaintiff’s twelfth assignment of error is not well taken.

I chased my cat Jethro off the sofa for the one hundredth time.

This is the court’s seventy-third oral argument day this year.

NOTE: (1) Ordinal numbers consisting of more than one word are hyphenated if the corresponding cardinal number is hyphenated, *e.g.*, “seven hundred and twelfth” is not hyphenated, because “seven hundred and twelve” is not hyphenated, but “eighty-second” is hyphenated, because “eighty-two” is hyphenated. (2) Ordinal numbers are expressed

numerically to identify reports and courts in citations, *e.g.*, *Boston v. Cream Pie*, 283 F2d 1 (9th Cir 1999).

1. Fractions, Decimals, and Ratios

Fractions appearing in nonquoted text either alone or with numbers less than 10 are spelled out; fractions appearing with numbers 10 or higher are expressed as numerals, *e.g.*,

Four and one-half years old

23 1/4

One third

When fractions are expressed as numerals, insert a space between the whole number and the fraction. Do NOT use a hyphen. (“10 2/3,” not “10-2/3.”)

Use numerals when using a decimal point, *e.g.*,

.08 percent blood alcohol content

Use numerals when denoting ratios, *e.g.*,

4:1 or ratio of 4 to 1 (as they are easier to read inside text)

However, spell out numbers when denoting measurement, *e.g.*,

The subject was five feet eight inches tall.

2. Percentages

Spell out the word “percent” when used in text. Use the percent sign (%) in tables, *e.g.*,

Fifteen percent of the people in 1993 voted against the ballot measure.

In 1995, 15 percent of the people voted against the ballot measure.

| Year | Percent |
|------|---------|
| 1991 | 10% |
| 1992 | 20% |
| 1993 | 15% |

3. Time

Include minutes and a.m. or p.m., *e.g.*,

Oral arguments begin at 8:00 a.m. (not “8 a.m.”)

We will break for lunch at 12:15 p.m.

The defendant was last seen at 8:00 p.m. (not 8 o’clock in the evening)

4. Dates

Three-part dates are set off with a comma between the day and the year and, generally, a comma after the year, *e.g.*,

Defendant appeals from the January 16, 1994, order.

When indicating an inclusive period of time, omit the comma after the first year, *e.g.*,

Defendant was on probation from June 14, 1980 to July 30, 1982.

When referring to a date by month and day, do not use endings with the day, *e.g.*,

the September 19 hearing (not September 19th)

When indicating time by month and year only, there is no comma before or after the year, unless the sentence structure requires a comma after the year, *e.g.*,

Three lawyers attended the April 1990 deposition.

The trial, which was scheduled for June 1990, was postponed several times.

When indicating a period of several years, use “to” or “through,” not a hyphen, *e.g.*,

Judge Caspar was on the bench from 1900 to 1921.

EXCEPTION: Hyphens are used for tax years. Do not repeat the “19” for inclusive years, *e.g.*, tax years 1995-97, but tax year 1999-2000. For years ending in double “00” repeat the entire sequence, *e.g.*, 2000-2001.

An indication of a decade does not take an apostrophe, *e.g.*,

1980s

Indications of time, as shown here, take an apostrophe, *e.g.*,

24 months' incarceration (or 24 months of incarceration)
six weeks' time (or six weeks of time)

5. Money

When referring to dollars, use the dollar sign; do not spell out “dollars,”
e.g.,

\$5 million; \$2 billion

Use \$25.00 if there are other mixed dollar and cents amounts referred to,
otherwise use \$25 if standing alone, *e.g.*,

Plaintiff sought \$10,000.00 in attorney fees and \$875.45 in costs.

The court entered judgment in the amount of \$10,000.

Use a comma in numbers larger than three digits, *e.g.*,

\$1,500

D. Acronyms/Initialisms

Acronyms are composed of the initial letters or parts of a compound term. An acronym is usually read or spoken as a single word, rather than letter by letter, *e.g.*, AIDS. Initialisms are abbreviations pronounced letter by letter, *e.g.*, ORCP, LCDC, DWS, HGN, JNOV, etc. Periods are usually omitted to improve readability. In either event, all but the most common acronyms/initialisms are spelled out upon first usage, followed by the acronym/initialism enclosed in parentheses, *e.g.*,

Mountain View Hospital District (MVHD) filed a motion for summary judgment.

The article that precedes an acronym or initialism depends on how the abbreviation reads: If it is pronounced beginning with a vowel sound, then use “an.” If it is pronounced beginning with a consonant sound, then use “a.”

an LCDC order
an ORAP provision
an ORCP ruling
a LUBA opinion
a Umatilla County sheriff

Generally, add an “s” when forming a plural of something singular, *e.g.*, SSNs, UFOs, MDs, CCRs, and add an apostrophe to show possession, *e.g.*, LUBA’s analysis or PERS’s liabilities.

E. Titles and Offices

Chief Justice Balmer
chief justice of the Supreme Court
Your Honor
The Honorable Thomas A. Balmer
Queen Mary
the queen
Dr. Smith (becomes Smith after first reference)

F. Abbreviations

Academic Degrees

Ph.D. (“Ph.D.” is preferred over “PhD” with no periods.)

Corpus Juris Secundum

Corpus Juris Secundum (an encyclopedia of United States law at the federal and state levels) is abbreviated as CJS without periods.

Judgment Notwithstanding the Verdict

When abbreviating, use “JNOV” instead of “j.n.o.v.”

Months of the Year (no periods, when appearing in citations):

| | |
|----------------|------------------|
| January – Jan | July – July |
| February – Feb | August – Aug |
| March – Mar | September – Sept |
| April – Apr | October – Oct |
| May – May | November – Nov |
| June – June | December – Dec |

II. Punctuation

A. Apostrophes

If a singular word ends in “s,” then add “’s” to show possession, *e.g.*,

George Harris’s house
witness’s testimony
Clauss’s land
PERS’s liabilities

or if a name ends in “z,” or “x,” *e.g.*,

Sanchez’s argument
Rex’s children

Exception: Singular entity names that end in “s” take only an apostrophe, *e.g.*,

Boy Scouts’ answer
General Motors’ complaint

Form the possessive of most plural words by adding only an apostrophe:

the Joneses’ driveway
the boys’ gym

Plural words that do not end in “s” take “’s” to form the possessive:

children’s toys
women’s tournament

If there are two (or more) possessors, proper punctuation depends on meaning. If the possession is separate, each possessor takes an apostrophe. If the possession is joint, only the last possessor takes an apostrophe, *e.g.*,

mother’s and father’s children (if referring to each parent’s children with another partner)
mother and father’s children (if they have children together)
mother’s and father’s arguments (if they are separate arguments)
mother and father’s arguments (if their arguments are joint)

Use an apostrophe with the following indications of time, *e.g.*,

36 months’ incarceration
two weeks’ time

Do not use an apostrophe with these particular word phrases, *e.g.*,

Attorney fees
IRAs

When a name of a case or other italicized authority takes a possessive ending, the “'s” is not italicized:

Miranda's holding has been called into question.

NOTE: Sometimes the use of “'s” can be awkward and make for difficult reading. In those situations, use “of” instead. *E.g.*, for “*Church at 295 S. 18th St.*'s analysis,” consider using “the analysis of *Church at 295 S. 18th St.*”; for “ORS 123.456(1)(a)'s wording,” consider using “the wording of ORS 123.456.”

B. Colons

1. Colons may be used to separate a grammatically complete sentence from, for example, another grammatically complete sentence or a list:

The court announced a general rule: Attorney fees may not be awarded in the absence of an authorizing statute or contract provision.

The officer found several items in defendant's apartment: a scale, five plastic bags containing white powder, and \$751 in small bills.

Colons may *not* be used after a grammatically incomplete thought:

Incorrect: The panel consisted of: Judge Yunker, Judge Bauman, and Judge Keenan.

Correct: The panel consisted of three judges: Judge Yunker, Judge Bauman, and Judge Keenan.

Incorrect: Defendant argues: (1) the trial court erred in admitting evidence, (2) the error was not harmless, and (3) alternatively, the trial court erred in denying his motion for directed verdict.

Correct: Defendant makes three arguments: (1) the trial court erred in admitting evidence, (2) the error was not harmless, and (3) alternatively, the trial court erred in denying his motion for directed verdict.

EXCEPTION: Colons may be used after verbs to introduce block quotations only, *e.g.*,

ORS 123.456 provides:

“Now is the time for all good citizens to come to the aid of their country.”

As part of that analysis, Justice Brennan observed:

“Under Article III of the Constitution, this Court may only adjudicate actual, ongoing controversies.”

If the quotation is not blocked, then use a comma.

ORS 123.456 provides, “Now is the time for all good citizens to come to the aid of their country.”

2. Use of Uppercase After Colons

If the material following a colon is not a complete sentence, then it does not begin with an uppercase letter.

The court excluded three items: a gun, a ukelele, and a garden hose.

If the material following the colon is a complete sentence, then it does begin with an uppercase letter.

The rain in Spain does not fall mainly on the plain: It mainly falls in the northern mountains.

The court did not deny defendant’s motion outright: It deferred its ruling until the evidence was offered at trial.

C. Commas

Remember the basic comma rule: Use a comma only when you know why you are using one.

The following guidelines do not set out all the situations in which commas are correctly used. They may be useful, however, in resolving some of the most frequent

questions about when to use, and when not to use, commas. For more guidance, see *The Chicago Manual of Style*; Bryan A. Garner, *A Dictionary of Modern American Usage*; and William A. Sabin, *The Gregg Reference Manual*.

1. Items in a Series

A series of more than two items should be separated by commas. The courts' convention is to use the serial comma (*i.e.*, a comma before the conjunction in a series of more than two items), because it eliminates the possibility of misreading:

Sheila invited Ben's parents, friends, and coworkers.

I agree that defendant's brief is well written, his analysis is cogent, and his arguments are persuasive.

A series of only two items should not be separated by a comma, regardless of the length of the items.

Plaintiff contends that the trial court erred when it granted defendants' motion for summary judgment on her claim for intentional infliction of emotional distress and when it denied her motion to exclude witnesses and reporters.

NOTE: It may be more clear to separate two items in a series with a comma when the items themselves contain multiple elements, *e.g.*,

In support of his motion, defendant cited Oregon and Washington cases, and state and federal regulations.

2. Compound Predicates

A predicate is a part of a sentence that contains a verb, but not a subject. Compound predicates are simply predicates that contain a series of verbs. They should be treated like any other series: if there are three or more verbs, use commas; if there are only two, do not.

The defendant objected to the introduction of Yost's testimony, asked the court to call a recess, and requested permission to file a memorandum in support of her objection.

The court denied plaintiff's motion for a judgment notwithstanding the verdict and granted his motion for a new trial.

3. Compound Sentences

A compound sentence consists of two or more independent clauses joined by a coordinating conjunction. A clause consists of a subject and a predicate. The most common coordinating conjunctions are *and*, *but*, *or*, and *nor*.

Independent Clause: I will go to Elaine’s New Year’s Eve party.

[Coord. Conj.] Indep. Clause: [and] I will bring a bottle of champagne.

[Coord. Conj.] Indep. Clause: [or] I will stay home.

Not a Clause: and dance on the table. [This is a second predicate; see “compound predicates” above.]

The coordinating conjunctions in compound sentences should be preceded by a comma.

Paul organized the outing, and everyone had a good time.

Defendant’s brief presented a difficult argument, but Gina understood it better after she attended oral argument.

In the narrow factual context of this case, neither the attachment of the transmitter to the truck nor the subsequent monitoring of that transmitter’s location invaded a privacy interest of defendant, and, it follows, no search implicating Article I, section 9, occurred.

Exception: When the clauses are short and there is no danger of misreading, the comma may be omitted.

Anna sang and Becca played the flute.

4. Complex Sentences

A complex sentence consists of one independent clause and one or more dependent clauses. A clause is dependent when it is introduced with a subordinating conjunction (*e.g.*, *because*, *although*, *if*, *after*, *before*, *until*, *since*, *so*, *that*, *unless*, *while*, *when*, *where*, *even though*) or relative pronoun (*who*, *whom*, *whose*, *whoever*, *whomever*, *that*, *which*).

Whether to use a comma between an independent clause and a dependent clause depends upon the meaning of and relationship between the clauses. When the dependent clause is restrictive—or necessary to the meaning of the sentence—do not use a comma. When the dependent clause is nonrestrictive—or not necessary to the meaning of the sentence—use a comma. (Those rules also explain when to

use “that” and when to use “which.” See page 99. “That” is restrictive and is used without a comma; “which” is nonrestrictive and is used with a comma.)

Those rules often lead to confusion, because the same sentence can be punctuated more than one way and still be correct, depending on its meaning.

Restrictive: John and Mary did not marry because they wanted money.
(Meaning: they married for some other reason.)

Nonrestrictive: John and Mary did not marry, because they wanted money.
(Meaning: they did not marry, and the reason was that they wanted money.)

Restrictive: I am not taking that course of action because I distrust Harry’s motives.
(Meaning: the reason I am not taking that action is not distrust of Harry’s motives.)

Nonrestrictive: I am not taking that course of action, because I distrust Harry’s motives.
(Meaning: I am not taking that course of action, and the reason is distrust of Harry’s motives.)

(No Comma): We first address defendant’s argument that the evidence should have been suppressed because it derived from an unlawful police-citizen encounter. (Here, the “because clause” explains why the evidence should have been suppressed, not why it is addressed first.)

(Comma): We first address defendant’s argument that the evidence should have been suppressed, because it is dispositive. (Here, the “because clause” explains why the argument is addressed first, not why it should have been suppressed.)

In some situations, use or omission of a comma can cue the reader about the relationship between two clauses and accordingly prevent misreading. Compare the following two examples:

Defendant argues that the trial court erred because he presented adequate exculpatory evidence.

Defendant now argues that the trial court erred in denying his motion to controvert, because he failed to preserve any challenge to the suppression ruling.

In the first example, the “because clause” explains the “that clause” element of the main clause (*i.e.*, why the trial court arguably erred). By contrast, in the second example, the “because clause” explains the main subject and verb of the main clause (*i.e.*, why defendant is making the argument).

5. Parenthetical Elements

a. Interrupting Parenthetical Elements

Either use two commas or no commas to set off parenthetical elements that interrupt a clause or phrase. (Parenthetical elements include nonrestrictive appositives and nonrestrictive clauses.) Generally, longer parenthetical elements should be set off by commas, while shorter parenthetical elements may go without any.

Correct: The state argues, as an alternative basis for its second assignment of error, that the trial court should not have suppressed the computer disk because it was in plain view when the officers searched defendant’s apartment.

Correct: The state argues alternatively that Article I, section 9, does not require suppression in these circumstances.

Incorrect: The state cites as an alternative ground justifying suppression, Article I, section 9, of the Oregon Constitution.

Correct: The state cites, as an alternative ground justifying suppression, Article I, section 9, of the Oregon Constitution.

b. Introductory Parenthetical Elements

The longer the introductory parenthetical element, the more helpful it is to set it off with a comma. If omitting a comma could lead to misreading, include it.

Yesterday I finished cleaning out my desk.

First, defendant objects to the denial of his motion to strike.

ORS 123.456(7) sets out, in part, the following:

When this case was before the trial court for the first time, defendant was sentenced to death.

c. Setting Out “Inc.” Before Parentheticals

Usually “Inc.” is set out with two commas, *e.g.*,

Time, Inc., is the parent company.

But when “Inc.” is followed by a parenthetical element, omit the second comma, *e.g.*,

Defendants Borg-Warner Automotive, Inc. (Borg-Warner) and Tenneco Automotive Operating Company, Inc. (Tenneco) allegedly manufactured * * *.

6. Appositives

An appositive points out the same person or thing by a different name. Whether to use commas with an appositive depends on whether it is restrictive or nonrestrictive, which is a question of meaning. Compare the following examples:

My sister Jill conducted firefighter qualification tests last weekend.

My mother, Doris, stands on her head every day.

In the first example, the absence of commas indicates that “Jill” is restrictive (or necessary), because the author has more than one sister and so “Jill” identifies which of the sisters is being referred to. In the second example, the author has only one mother, so the commas indicate that “Doris” adds only additional, parenthetical information.

D. Dashes

Dashes are most commonly used to amplify and explain ideas, digress from the main idea, or create an abrupt break or sudden change in a sentence:

He spent several hours explaining his case—a case that he knew could not be won.

The attorney—who had been waiting three hours for a ruling on the motion—entered the courtroom in an angry mood.

A space can be added before and after a dash when used as punctuation in the text of a slip opinion; however, when published in the Advance Sheets, those spaces will be removed. In slip opinions, use two hyphens “--” not the typographical “—” dash.

See also Punctuating Parenthetical Elements, page 88.

E. Hyphens

1. Do Not Hyphenate

a. Words That Begin With the Following Prefixes:

anti, bi, bio, co, counter, extra, infra, inter, intra, macro, micro, mid, mini, multi, non, over, pre, pro, pseudo, re, semi, sub, super, trans, ultra, un, and under, *e.g.*,

antitrust, nonprofit, coworker, subconstitutional, pretrial

BUT

mid-nineteenth century.

b. Factfinder

The factfinder took note of the witness's demeanor.

c. Patdown

The assailant put his hands over his head during the patdown.

When used as a verb, it should be shown as two words:

The officer pat down the suspect.

d. Adjective Forms of Compounds in Which the First Word Is an Adverb Ending in "ly," *e.g.*,

her eagerly awaited homecoming

his totally incompetent performance

e. Compound Modifiers That Appear After a Verb, *e.g.*,

Defendant's examination was court ordered.

BUT

The court-ordered examination was inconclusive.

f. Percentages When Used as Adjectives, *e.g.*,

10 percent increase, two percent annual pay raise

- g. The Word “email”
- h. The Words “well taken” Unless Used as a Compound Modifier

2. A Hyphen Is Used

- a. To Join a Prefix to a Word Beginning With a Letter in Uppercase or a Number, *e.g.*,

un-American, Anti-Federalist, pre-1998

- b. To Join a Prefix to a Main Word When the Second Element Consists of Two or More Words, *e.g.*,

pre-latency-period therapy, non-work-related activities

- c. When the Last Letter of the Prefix (Usually a Vowel) Is the Same as the First Letter of the Following Word and the Result Improves Readability, *e.g.*,

infra-area, non-neutral

BUT

preexisting

- d. To Avoid Confusion and Misreading, *e.g.*,

re-cover (to cover again), not recover (to get back or regain)
 re-cite (to cite again), not recite (to read or declaim)
 co-conspirator (not coconspirator); co-counsel (not cocounsel)

- e. With the Prefixes “Cross” and “Post” (in conformance with the Oregon Rules of Appellate Procedure), *e.g.*,

cross-assign, cross-appellant, cross-appeals
 post-conviction, post-trial, post-certification

- f. When Using:

| | |
|----------------|---------------|
| 9-1-1 | I-5 |
| case-in-chief | policy-making |
| decision-maker | second-guess |
| ex-husband | self-defense |
| ex-wife | |

- g. With Adjective Phrases Containing Numerals or With Compound Modifiers That Appear Before the Word Modified to Prevent Misreading, *e.g.*,

three-year-old victim, five-foot-tall tree, 18-year marriage, 25-year minimum term, third-party beneficiary, case-by-case basis, full-time work (but he worked full time), common-law wife, court-appointed attorney, first-degree murder, death-penalty case, penalty-phase proceeding; two- and three-year-old children, self-defense, right-of-way, time-barred (but the claim is time barred)

NOTE: For more information on compound modifiers and hyphenation, see Garner, *A Dictionary of Modern American Usage* (on “phrasal adjectives”). The idea behind hyphenating compound modifiers is to promote readability and avoid misreading.

- h. When Adding Prefixes to Acronyms, *e.g.*,

pre-ORCP

NOTE: For more examples, see Word Pairs, page 90; and Word Functions, page 101.

F. Punctuating Lists

Lists may be set out in several ways. Remember that lists that consist of items that are themselves sentences can always be written as separate sentences. Otherwise, the following guidelines may be helpful:

- If a list is introduced by a complete grammatical thought, use a colon at the end of the introductory sentence. If the list is not introduced by a complete grammatical thought, then a colon may NOT be used.

Correct: Defendant assigns error to three rulings: (1) the denial of his motion to disqualify Dr. Demento as an expert; (2) the denial of his motion to suppress chemical evidence; and (3) the granting of plaintiff’s motion for a new trial.

Correct: Defendant assigns as error (1) the denial of his motion to disqualify Dr. Demento as an expert; (2) the denial of his motion to suppress chemical evidence; and (3) the granting of plaintiff’s motion for a new trial.

Incorrect: Defendant assigns error to: (1) the denial of his motion to disqualify Dr. Demento as an expert; (2) the denial of his motion to suppress chemical evidence; and (3) the granting of plaintiff’s motion for a new trial.

- Items in a list may be, but are not required to be, numbered.
- Generally, items in a list, whether numbered or not and whether introduced by a colon or not, may be separated by either semicolons or commas. If the items are long or contain internal punctuation, it may be clearer to use semicolons.
- The first item in a list should not begin with an uppercase letter, unless the items are full sentences. See also page 59.

The trial court announced three ground rules: Witnesses were to be excluded from the courtroom; only three members of the press were to be allowed in the courtroom at any time; and lions would be admitted only if accompanied by tigers and bears.

See also pages 78 through 84 for discussion of the proper use of colons and commas.

G. Punctuating Parenthetical Elements

Nonrestrictive parenthetical elements (that is, parenthetical elements that give additional information but are not necessary to identify the antecedent) can be set off by commas, dashes, or parentheses. If a parenthetical element has a close logical and syntactic relation to the rest of the sentence, then use commas. Dashes indicate a more remote relation, and parentheses still more remote.

See also pages 83 to 84 for discussion of parenthetical elements.

H. Semicolons

1. Use a semicolon to separate two independent clauses not joined by a conjunction, *e.g.*,

The defendant refused to testify; he later was convicted of murder in the first degree.

2. If the elements in a series are long and complex or contain internal punctuation, then they are separated by semicolons, rather than by commas, *e.g.*,

Defendant was charged with three counts of rape in the first degree, ORS 163.375; two counts of sexual abuse in the first degree, ORS 163.427; two counts of rape in the third degree, ORS 163.355; and one count of sexual abuse in the third degree, ORS 163.355.

3. A semicolon precedes the words however, therefore, hence, thus, accordingly, and besides, when used to introduce a clause. A comma follows, *e.g.*,

The Supreme Court reversed and remanded the case; therefore, the Court of Appeals had to decide the case for a second time.

The trial judge refused to suppress the evidence; thus, defendant was convicted on all counts.

III. Word Usage and Conventions

A. Word Pairs

A/An

The indefinite article “a” is used before words that begin with a consonant, words with a pronounced h and a long u sound (eu) or with words such as “one.”

a historical; a habitual; a union; a Eucharist; a one-time deal

“An” is used before words beginning with a vowel or an unsounded “h.”

an eagle; an appellate judgment; an hour; an heir; an honor

The article that precedes an acronym or initialism depends on how the abbreviation reads: If it is pronounced beginning with a vowel sound, then use “an.” If it is pronounced beginning with a consonant sound, then use “a.” For examples, see page 75.

A/From a

“Defendant appeals a judgment * * *.”

“Defendant appeals from a judgment * * *.”

Either is correct. If the authoring judge has a preference, then use the construction that the judge prefers.

Absent/Without

“Without” or “in the absence of” is preferred.

Without any arguments against doing so, the trial court dismissed the jury.

or

In the absence of any arguments against doing so, the trial court dismissed the jury.

NOT

Absent any arguments against doing so, the trial court dismissed the jury.

Administrative Law Judge/Hearing Officer

In Oregon since 2003, the title “administrative law judge” is now used.

Affect/Effect

“Affect” is a verb that means to have an influence on, to bring about a change in, or to touch or move the emotions of.

The trial was affected by the constant media attention.

“Effect” is most commonly used as a noun, but it can also be used as a verb. As a noun it means something that is brought about by a cause or agent; a result or outcome. As a verb it means to achieve a result, to execute, or to cause to occur.

Noun: Her closing argument had no effect on the jury’s final decision.

Verb: The attorney was unable to effect any change in the system.

Allow/Grant

Typically, allow is used to refer to a ruling on a petition.

Grant is used to refer to a ruling on a motion.

Alternate/Alternative

“Alternate” means every other or substitute, while “alternative” means providing a choice.

She takes early lunch during alternate weeks.

An alternative approach is to take no lunch at all.

Although/While

“Although” more properly introduces an aside; “while” is more properly used only in a temporal sense.

Although many people disagree, Ian thinks that coffee is good for you.

While I was in Paris, I decided to become a can can dancer.

Amicus Curiae/Amici Curiae (Friend/s of the Court)

1. *Amicus curiae* can be used in two different ways, either as an adjective describing the brief, or as a noun designating the party or person immediately following, *e.g.*,

J. Marcus Cool, of Cool, Hand and Luke, Portland, filed an *amicus curiae* brief on behalf of American Theatre Institute.

Sherman Potter, of Potter & Daughter, P.C., Portland, filed a brief on behalf of *amicus curiae* Oregon Tempest in a Teapot Association.

2. *Amici curiae* is the plural form used in the same way.

J. Marcus Cool, of Cool, Hand and Luke, Portland, filed an *amici curiae* brief on behalf of American Theatre Institute, Americans for Good Theatre Association, and Oregon Actors Association.

Sherman Potter, of Potter & Daughter, P.C., Portland, filed a brief on behalf of *amici curiae* Oregon Tempest in a Teapot Association, Oregonians-R-Us, Inc., and We are the World Foundation.

NOTE: The number of parties, not the number of briefs, dictates the use of singular or plural. It is acceptable to use *amicus curiae* or *amici curiae* for the first reference and *amicus* or *amici* thereafter.

Appeal/ Review

A party “appeals” from a lower court as of right, but a party “seeks review” in court of the action of an administrative agency or when the higher court has discretion whether to take the case. The related documents are called “notice of appeal” and “petition for judicial review” (in the case of an administrative proceeding) or “petition for review” (in the case of a petition to the Oregon Supreme Court).

Within an administrative system, the correct term is “appeal.” For example, a party may “appeal” to the Workers’ Compensation Board from the order of an ALJ.

Appeals/Appeals from

Defendant appeals a judgment of conviction.

Defendant appeals from a judgment.

Either one is acceptable.

Because/Since

“Because” explains why; “since” expresses time.

Because he attended seven basketball games, David had a busy weekend.

Since moving to a window office, John has been much more productive.

Between/Among

As a general rule, “between” is used when the sentence involves two things or when expressing a close relationship of any number of individual things.

The jury had to decide between the death penalty and life in prison.

His time was divided between school, sports, and work.

“Among” is used when the sentence involves more than two things.

His present conviction was just one among many.

Her estate was divided among all her relatives.

The above rule expresses the distinction between “between” and “among” in a simplistic manner. Here are a couple of specific rules: “Between” is used to express one-to-one relations of many things, *e.g.*, a treaty between four powers. “Among” is used to express collective and undefined relations, *e.g.*, She was the best among all the attorneys.

Circuit Court/Trial Court

When referring to the lower court in a particular case, use “trial court.” Use “circuit court” when referring to circuit courts generally (“The legislature created jurisdiction in the circuit court.”) or to general propositions about particular courts (“Post-certification challenges to the constitutionality of initiative measures generally must be filed in Marion County Circuit Court.”). Also, use “circuit court,” not “trial court,” in tag lines. See also Post-Conviction Cases, page 104.

Cite/Cite to

“Cite to” is redundant; “cite” is preferred.

In *Smith*, the court cited ORAP 5.45.

NOT

In *Smith*, the court cited to ORAP 5.45.

Compose/Comprise

The parts *compose* the whole; the whole *comprises* the parts.

The whole is *composed of* the parts; the parts *comprise* the whole.

The most common error is using “comprise” when “compose” is correct:

Incorrect: Judge Haselton, Judge Armstrong, and Judge Duncan comprise Department One.

Correct: Judge Haselton, Judge Armstrong, and Judge Duncan compose Department One.

Incorrect: Department One is comprised of Judge Haselton, Judge Armstrong, and Judge Duncan.

Correct: Department One is composed of Judge Haselton, Judge Armstrong, and Judge Duncan.

Correct: Department One comprises Judge Haselton, Judge Armstrong, and Judge Duncan.

Consecutively to/Concurrently with

A consecutive sentence is served “consecutively to” another sentence:

The trial court ordered that defendant’s 12-month sentence under the sentencing guidelines for theft be served consecutively to his Measure 11 sentences.

A concurrent sentence is served “concurrently with” another sentence:

The trial court imposed aggregated sentences totaling 36 months, all of which were to be served concurrently with the burglary sentences.

Consistent With/Consistently With

For adverbial uses, “consistently with” (that is, “in a manner consistent with”) is correct.

The court decided the case consistently with its precedent. (in a manner consistent with its precedent)

Criterion / Criteria

“Criteria” is plural; accordingly, it may not be used when discussing only one factor.

The court primarily relied on the first criterion.

Datum / Data

“Data” is plural and takes a plural verb.

The data support plaintiff’s theory.

Decree / Judgment

Historically, equitable proceedings resulted in “decrees,” while legal proceedings resulted in “judgments.” The distinction between law and equity was abolished in Oregon in 1980. *See* ORCP 2. The final determination in all civil actions is now titled a “judgment.” Some statutes still use the term “decree,” and occasionally so do trial courts. The appellate courts, however, will substitute the word “judgment.” *E.g.*, *Webber v. Olsen*, 330 Or 189, 192 n 1, 998 P2d 666 (2000); *State ex rel Olson v. Renda*, 171 Or App 713, 715 n 3, 17 P3d 514 (2000).

Disinterested / Uninterested

“Disinterested” means lacking a stake in an outcome. “Uninterested” means bored.

The judge appointed a disinterested arbitrator.

Driver’s License / Driving Privileges

Different statutes use different terms; they are not interchangeable. For example, when a person fails or refuses a breath test, the Oregon Department of Transportation suspends the person’s “driving privileges,” not his or her “license.” Check the statute at issue for the correct term.

Employe / Employee

In older statutes and opinions, the spelling of certain words (*e.g.*, employe / employe, subpoena / subpena) was changed to enable faster data entry. After the advent of word processing, those types of words were restored to their original spelling. It is correct, however, to use those shortened spellings when directly quoting those sources or to bracket in the missing letters.

Expedient/Expeditious

“Expedient” means that a particular course of action is a practical solution to a problem; it also has overtones of side-stepping tough choices. “Expeditious” means speedy.

The lawyers decided that it would be expedient to waive oral argument.

The court must decide all cases in an expeditious manner.

Fewer/Less Than

“Fewer” denotes countable things; “less” denotes things that can’t easily be counted. However, it is customary to use “less” for time, money, and distance.

If you have 10 items or fewer, then you can go to the express lane.

I have less money than you.

Finding/Holding

A “finding” is a factual determination; a “holding” is an application of law to particular facts.

The trial court found that the officer lacked subjective probable cause.

The Court of Appeals held (not found) that the search was invalid because the officer lacked subjective probable cause.

General statements of law unconnected to particular facts are not holdings.

The Supreme Court stated (not held) that probable cause has both an objective and a subjective component.

“Determination” can refer to either.

Forgo/Forego

“Forgo” means to do without.

I would rather eat late, than to forgo lunch altogether.

“Forego” means to go before.

Based on the crowds lining the streets to catch a glimpse of Justin Bieber entering the courthouse, it is obvious that his reputation foregoes him.

If . . . Was/Were

See Subjunctive Mood, page106.

Implicitly/Impliedly

“Implicitly” is preferred.

The court’s ruling implicitly indicated several factual findings.

In Light of/In the Light of

“In light of” is preferred.

Loath/Loathe

“Loath” means unwilling or reluctant:

I am loath to go to the meeting today.

“Loathe” means to strongly dislike or hate something:

I loathe the thought of eating tofu.

May/Might

“May” expresses authority.

The Secretary of State may certify a ballot measure.

“Might” expresses possibility.

The Secretary of State might resign tomorrow.

Of/For

Most authorities consider the following to be more correct:

Defendant was convicted of three counts of assault.

Defendant appeals a judgment of conviction for assault.

Over/Under–More Than/Less Than

Generally, “over” and “under” are used in spatial relationships; they do not take the place of “more than” or “less than.”

The train traveled rapidly over miles of desert terrain.

The battleship drifted under the bridge.

The attorney has more than (not over) \$5,000 in outstanding legal fees.

He had less than (not under) \$20 in his pocket.

Pleaded/Pled

Pleaded is the preferred form.

Portion/Part

A “portion” is a piece of a whole that can be divided into shares, as an estate or a pie. A “part” is a more general term that connotes something less than the whole.

Jenny argued that she had been deprived of her rightful portion of the estate.

Scott contended that he owned the part of the property beyond the fence.

Jim challenged the part of the judgment that prohibited wearing bow ties.

That part of the statute supports defendant’s argument.

Proved/Proven

“Proven” is an adjective, while “proved” remains the accepted past participle of prove.

Her attorney is a proven winner.

The prosecuting attorney has proved his case.

Right/Authority

Generally, individuals have “rights” (*e.g.*, the right against self-incrimination, the right to bear arms); however a governmental body or representative needs “authority” to act (*e.g.*, a question of whether a city had authority to take property by eminent domain).

Since/Because

“Because” explains why; “since” expresses time.

Because he attended seven basketball games, David had a busy weekend.

Since moving to a window office, John has been much more productive.

That/This; Those/These

“That” is used as a demonstrative pronoun to refer to thought expressed earlier:

The letter was unopened; that in itself casts doubt on the inspector’s theory.

“This” is used when the referent is yet to be mentioned:

This is what bothers me: We have no time to consider late applications.

“Those” and “these” are similarly distinguishable.

Defendant relied on three statutes in his motion. The trial court relied on those statutes, as well as two others.

These are the problems with plaintiff’s arguments: The arguments were not raised to the trial court, they are unsupported by legal authority, and they are wrong.

That/Which

“That” introduces a restrictive clause (a clause that is necessary in context to the meaning of the sentence). Commas are not used with a restrictive “that clause.”

The decision that the judge made regarding suppression of evidence was contrary to the legal standard.

“Which” introduces a nonrestrictive clause (a clause that can be omitted without changing the meaning of the sentence). Commas are required with a nonrestrictive “which clause.”

The decision, which caught the legal community by surprise, was contrary to the legal standard.

The meaning to be conveyed, not grammatical differences, dictate when to use “that” and “which.” Sometimes the same sentence can correctly use either, depending on meaning.

The lawnmower that I borrowed is in the garage. (Correct if there are many lawnmowers under discussion and it is necessary for clarity to identify the one borrowed.)

The lawnmower, which I borrowed, is in the garage. (Correct if there is only one lawnmower under discussion and adjectival clause serves only to give extra information.)

See also discussion of commas on page 79.

Who/Whom

“Who” is used as a subject. “Whom” is used as an object of a verb or preposition. When in doubt about which to use, try rethinking the sentence using “he” or “him.”

Who is listening?
(Is *he* listening?)

Defendant, who was not present in the courtroom, was found guilty.
(Defendant—he was not present in the courtroom—was found guilty.)

A woman who I think is a genius wrote this sentence.
(A woman—I think she is a genius—wrote this sentence.)

He asked whom he should speak to.
(He should speak to him.)

Use “that,” not “who” or “whom,” when the antecedent is not a person.

The bank that Kym uses gives away free blenders with new checking accounts.

Christy sued the company that made the defective golf clubs.

B. Word Functions

1. One Word or Two Words

“Case Law” and “Grid Block” are always two words (unless being quoted).

“Cannot”

Cannot is used as one word, except when using a “not only” construction:

We cannot reach unpreserved error.

She can not only pitch, but she can catch, too.

Other words are usually spelled as one word, such as:

caseworker, factfinder, forestlands, handwritten, insofar, landowner, lienholder, online, overarching, passersby, pickup, policyholder, statewide, time-frame, timeline, timesheet, voicemail, and website

Some words, however, are either one word or two, depending on how they function within the sentence: *e.g.*, clean up, set over, set back, day care, pat down:

The cleanup crew arrived early to start the clean up.

The trial was set over until tomorrow. The defendant requested a setover.

The setback requirement provides for a six foot easement. The house was set back from the property line by five feet.

Her mother provides day care both privately and at a local daycare center.

The subject was pat down by the officer. The officer who performed the pat-down testified that he found a knife.

2. Contractions

Appellate opinions are formal documents and, accordingly, do not use contractions. When quoting, however, if the original uses contractions, use those contractions in the quotation.

C. Word Usage

Language

“Language” technically refers to English, French, Spanish, etc. Although frequently used in constructions such as “the language of ORS 809.222,” it is more correct to use “the wording of ORS 809.222” or “the text of the statute.”

Letter Opinion

“Letter opinion” is preferred to “opinion letter.”

Only

The placement of “only” can change the meaning of a sentence. It modifies the word or phrase that comes immediately after it, so it should be placed accordingly to avoid ambiguity.

The jurisdiction of the court is constrained only by statute.
(That means that the only thing limiting the court’s jurisdiction is statute.)

The jurisdiction of the court is only constrained by statute.
(That means that there are other effects on the court’s jurisdiction, but the one way that statutes affect jurisdiction is by constraining it.)

The statute only pertains to state actors.
(That is unlikely to express what the author means. It communicates that the statute only pertains, but does not have some other effect.)

The statute pertains to only state actors.
(That is more likely to express the author’s meaning. It communicates that the only actors to whom the statute pertains are “state” actors.)

The statute pertains only to state actors.
(That is an alternative author’s meaning. It communicates that the only category of people to whom the statute pertains is “state actors.”)

Parameter(s)

This word will almost never be correct in legal writing; it is a technical scientific and mathematical term. When tempted to use it, try “limits,” “boundaries,” or “borders.”

The principles of justiciability and preservation keep judicial analysis within relatively confined boundaries (not parameters).

Parties, Victims, Children, and Law Enforcement

Generally, refer to parties to a case using their position in the lower tribunal (plaintiff, defendant, claimant, etc.). Exceptions include the following: (1) domestic relations cases, in which the parties are referred to as “husband” and “wife”; (2) civil commitment proceedings, in which the person for whom commitment is sought is referred to by his or her position on appeal (appellant, respondent); (3) termination of parental rights proceedings, in which the parents are referred to as “mother” and “father” and the children are referred to as “child” or “children” or sometimes by their first initials; (4) juvenile delinquency proceedings, in which a person alleged to be within juvenile court jurisdiction is referred to as “youth”; (5) juvenile dependency proceedings, in which a minor is referred to as “child”; and (6) adoption cases, in which “child” is used.

Additionally, when a word indicating a party’s role in the lower proceeding or on appeal or review is used as a substitute for the party’s name, the definite article “the” is not used (*e.g.*, plaintiff, petitioner, etc.). When using an abbreviated name (not party designation), use “the” as in, “the state,” “the superintendent.”

Do not use the full names of victims. The following references are acceptable:

- the victim
- the first *or* last name, but not both
- an initial (the initial may, but need not, be related to the victim’s name)

In dependency and termination cases, and criminal cases involving a child victim or witness, do not use the names of children. Instead, use an initial. For readability, it is preferred to use a single initial, which may, but need not, be related to the victim’s name. If an author would like to use two initials (*e.g.*, to differentiate among siblings whose first names begin with the same letter), then do not use periods (AG, AM, etc.).

In the following types of cases, do not use the name of a person who is protected by a court order (or similar); instead, use a role-based description, such as “petitioner,” or an initial: Family Abuse Prevention Act (FAPA) (including violation of restraining order), stalking (including violation of a stalking order), Elder Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA), registration of a foreign restraining order, and Sexual Abuse Protection Order (SAPO).

When referring to specific law enforcement personnel, use the correct title, *e.g.*, officer, deputy, trooper, detective, etc.

Post-Conviction Cases

When referring to the circuit court in a post-conviction proceeding, “post-conviction court” is preferred to “post-conviction trial court.” The petitioner in a post-conviction case is referred to as “petitioner” and the defendant is referred to as “the superintendent,” or “the state.”

Previous/Prior

“Previous” and “prior” as adjectives are equally acceptable.

Father’s parental rights had been terminated in a prior (or previous) proceeding.

Prior to/Before

“Prior to” is disfavored; “before” is preferred.

Wife withdrew joint funds from a checking account before (not prior to) filing for dissolution.

That

“That” as a relative pronoun or relative adverb is sometimes suppressed in informal writing; the preferred practice in opinions is to include it.

The court held that the evidence had been wrongly admitted.

Defendant admitted at oral argument that that proposition was subject to debate.

D. Variant Spellings

Use kidnapping, not kidnaping.

Use marshalling, not marshaling.

IV. Common Grammatical and Style Problems

A. Collective Nouns

Collective nouns require singular verbs when the group is functioning as a unit. When individual members of the group are acting independently, a plural verb is used. If a sentence seems awkward, then insert the words “members of” before the collective noun and use the plural verb. Some common examples of collective nouns are:

| | |
|----------|---|
| court | The court is not in session today. The members of the court are in conference. |
| majority | The majority states that the assignment of error was not preserved for review. The author of the majority is mistaken on that issue. |
| jury | The jury has adjourned for the day. The members of the jury have adjourned for the day. |
| council | The Council on Court Procedures has adopted new rules. The members of the council have adopted new rules. |

B. Parallel Construction

Sentence parts must match if a sentence is to make logical sense. Therefore, parts of a sentence that are parallel in meaning are parallel in structure.

| | |
|-------------------|---|
| Incorrect: | The court held that the taxpayer was guilty of failing to report income, claiming fraudulent deductions, and in the treatment of ordinary income as capital gain. |
| Correct: | The court held that the taxpayer was guilty of failing to report income, claiming fraudulent deductions, and treating ordinary income as capital gain. |

C. Passive Voice

Avoid using the passive voice whenever possible. The passive voice can create ambiguity about who is doing the acting in a sentence. *See State ex rel Click v. Brownhill*, 331 Or 500, 509, 15 P3d 990 (2000) (Durham, J., concurring) (ambiguity in statute arose because of the use of the phrase “shall not be used”; through use of passive voice, legislature failed to identify who “shall not use”). See also discussion of Active Voice, page 107.

D. Verbs

1. Was/Were Agreement:

Ringo Starr argued the cause for the appellant. With him on the brief was The Beatles LLP.

Mick Jagger argued the cause for respondent. With him on the brief were Keith Richards and the Rolling Stones, PC.

2. Past Perfect Tense

When referring to an action completed before another past time, the past perfect tense is used.

Incorrect: Petitioner testified at the post-conviction hearing that he asked his trial lawyer to investigate his alibi defense.

Correct: Petitioner testified at the post-conviction hearing that he had asked his trial lawyer to investigate his alibi defense.

NOTE: Depending on context, past-perfect tense might not be necessary. For example, if describing testimony, the point is to describe an event that happened in the past, not that the event happened in the past relative to some other time. For example, “John testified that the light was green.”

3. Subjunctive Mood

For a much more complete explanation of the proper use of the subjunctive, see Garner, *A Dictionary of Modern American Usage*. One situation in which the subjunctive is generally correct is to express a condition that is contrary to fact or hypothetical:

If Mary were queen of the world, then everyone would want to obey her.

If the court were to take notice of defendant’s arguments, then it would ignore long-standing principles of preservation.

Not every “if” clause takes the subjunctive, however:

If defendant was a resident of Oregon in 1999, then he must pay taxes for that year.

E. Active Voice

In the active voice, the subject of a sentence or clause performs the action of the verb. In the passive voice, the subject of a sentence or clause is not the actor. Generally, the passive voice is wordier and may be vague. The active voice is clearer and stronger and tells who did what to whom. See also page 105.

Active: I missed the deadline.

Passive: The deadline was missed.

F. Gender-Neutral Wording

Gender-neutral terms are preferred, and gender-based pronouns are avoided except when referring to a specific person. Use “he or she” only when all other constructions fail.

For example, use

letter carrier, not mailman
flight attendant, not stewardess

worker, not workman
sales clerk, not salesman

G. Informal or Technical Terminology

An appellate opinion is a formal document. Its content reflects that formality. For example, instead of using the word “said” or “says,” use the word “states” or “stated” (or any of the words listed below depending on the context of the sentence):

| | | |
|-----------|-------------|------------|
| adds | emphasizes | observes |
| argues | establishes | opines |
| compares | explains | points out |
| concludes | finds | posits |
| continues | insists | proposes |
| declares | maintains | suggests |
| disagrees | notes | thinks |

When using technical terms or terms of art, explain those terms.

GLOSSARY

(These terms are used internally in appellate opinion drafting, Judicial Assistant and Law Clerk materials, on the website, etc., but may or may not be referred to elsewhere in this manual.)

Advance Notice—A one-day advance notice of Oregon Appellate Court cases scheduled to be released that is posted on the OJD Publications website—usually Tuesday of each week for Court of Appeals cases and Wednesday of each week for Supreme Court cases.

Advance Sheets—Opinions of cases issued weekly by the Oregon Appellate Courts, including, as issued, both the Regular and Magistrate Divisions of the Oregon Tax Court, and compiled together into a softbound book that is published bimonthly by the Publications Program. Advance Sheets are available by subscription or by issue.

Affirmed by an Equally Divided Court—When an even number of justices or judges meet to decide a case, a situation can arise where the court is evenly split regarding its disposition. In that event, the case will be considered affirmed, and no majority written opinion will be issued.

AWOP—Term of art used in the Court of Appeals to refer to cases that are affirmed without opinion. No precedential value is accorded those decisions, which are published by case caption and number only.

Bluebook—Shorthand reference to the citation manual, *The Bluebook, A Uniform System of Citation*, which is published and distributed by the Harvard Law Review Association.

Citation—Form by which authoritative sources are identified for easy reference. For the most part, Oregon Appellate Courts do not use periods in citations.

A **string citation** is a proscribed order listing more than one authority to support a legal position (usually set out starting with strength of authority, jurisdiction, rank of court, and date) and often introduced with a signal.

A **parallel citation** is an additional reference to the same case published by a different source.

A **full citation** sets out the official source followed by a parallel source.

A **short form citation** is a subsequent reference to a case already set out in full and is a less complete citation but which still clearly identifies the referenced material.

A **jump or pinpoint citation** refers to the specific page on which a legal authority is cited.

Common Law—Law created by judicial opinions, not statutes. Hyphenate when using this term as an adjective before a noun.

Cost Box—Printed on title page of slip opinion and used to designate expense costs (not attorney fees) that are allowed by the court. This information is not published in the Advance Sheets or the Oregon Reports.

Court of Appeals—In Oregon, an intermediate appellate court that has jurisdiction to hear most civil and criminal appeals from circuit court (exceptions include death-penalty cases and Tax Court appeals) and review most state administrative agency actions. Its primary function is the correction of error by the application of principles of law; formulation of law is a secondary function performed as required for deciding cases.

Department—A department is a group of three judges in the Court of Appeals, designated by the Chief Judge, that generally hears and decides cases together. If a member of a department must be recused or is unavailable for any reason, the Chief Judge will assign another judge to sit on a particular case. Accordingly, the “panel” of judges that hears and decides a case may or may not correspond to the make-up of the “department” to which the case is assigned. One judge in each department is the “presiding judge.” The presiding judge presides at oral argument, makes written case assignments, and administers the department. Each department has a number, which appears, among other places, on the court’s oral argument calendar, and a color, which corresponds to the color of the cover sheet on its draft opinions. Department 1 is pink; Department 2 is blue, Department 3 is green, and Department 4 is purple. Each department generally meets twice a month to discuss draft opinions circulated since the last department meeting. When all three judges on the panel agree that an opinion is ready, it is “approved to go down.”

Dictum—Statements in an opinion that are not necessary to the disposition of the case.

Disposition by Order—A court may choose to dispose of a matter by issuing an order instead of an opinion. Acceptance of Certified Questions or Appeals, issuance of Alternative Writs of Mandamus, amendments of typographical errors, and the certification of ballot titles are examples of such orders.

Discretionary Review—Indicates that a court chooses whether or not to review a case.

En Banc—Cases in which all available judges participate in the consideration and vote on the outcome.

Footnotes—Notes at the bottom of a page citing or commenting on the part of the text to which they are referenced. Generally a footnote contains information of lesser importance to the larger body of work.

Full Court—In the Court of Appeals, any judge may refer to the full court an opinion approved to go down by a panel. The full court meets once a month to discuss cases referred to it. Reasons for referral include, but are not limited to, the following: (1) the opinion would overrule a prior case; (2) the same or similar issue is before several departments of the court; (3) a judge not on the panel disagrees with the result or reasoning. Not all cases referred to full court are taken en banc; a vote of the majority of the judges available to participate is required.

Magistrate Division—The Magistrate Division tries or mediates all tax appeals, unless the Tax Court judge assigns the case to the Regular Division. A party may appeal from a magistrate’s final decision to the judge of the Tax Court. Hearings in the Magistrate Division are often informal proceedings. Hearings may be by telephone or in person and may be held around the state. A taxpayer may choose to represent himself or herself or to be represented by a lawyer, public accountant, real estate broker, appraiser, or other individual.

Media Releases—Media releases are issued weekly and contain summaries of cases issued or otherwise decided by the Oregon appellate courts. Court of Appeals cases that have been Affirmed Without Opinion are listed by name and county of origin only. Supreme Court petitions for review allowed and denied are listed by case name and number. Other miscellaneous Supreme Court matters, such as public meetings, are included on the media releases.

Miranda—Refers to the United States Supreme Court decision *Miranda v. Arizona*, 384 US 436, 86 S Ct 1602, 16 L Ed 2d 694 (1966), from which the rules regarding the right to remain silent and the right to an attorney are taken.

On Appeal/Review—A party “appeals” from a lower court as of right, but a party “seeks review” in court of the action of an administrative agency or when the higher court has discretion whether to take the case. The related documents are called “notice of appeal” and “petition for judicial review” (in the case of an administrative proceeding) or “petition for review” (in the case of a petition to the Oregon Supreme Court). Within an administrative system, the correct term is “appeal.” For example, a party may “appeal” to the Workers’ Compensation Board from the order of an administrative law judge.

ORAP—Acronym for Oregon Rules of Appellate Procedure. Those rules are applicable to proceedings in the Oregon Supreme Court and Court of Appeals and supplement the statutory requirements. The most recent version can be accessed on the Oregon Judicial Department’s website, on the Rules page.

Oregon Reports—Hardbound volumes of the opinions issued by the Oregon Appellate Courts, published separately by individual court. The Oregon Reports is the official reporter for Oregon case law, and published and distributed by the Office of the State Court Administrator, Publications Program.

Parenthetical Information—When used in relation to citation, text within parentheses that usually indicates alterations to text or provides explanatory statements.

Per Curiam—By the court.

Precedent—All written Oregon appellate court opinions have the same precedential weight, whether signed or issued per curiam.

Publications—The program of the State of Oregon Law Library that is responsible for publishing the official version of the Oregon Appellate Courts opinions (and miscellaneous other official materials) in hardbound volumes as the Oregon Reports, in softbound biweekly Advance Sheets, and online.

Publications Website—The Publications website, managed by the Publications Program, includes links to Supreme Court, Court of Appeals, and Tax Court opinions since 1998, currently in publication format (not slip opinion format). The page numbers in opinions on the Publications website can slightly vary from the page numbers ultimately used in the Oregon Reports, due to minor edits that might be made after an opinion is issued. The Publications website also includes links to all media releases issued by the appellate courts, and printable and online versions of this Style Manual.

Release Date—Date that opinions are released to the public via the Appellate Courts Records Section. Currently the Court of Appeals releases opinions to the public on Wednesdays, and the Supreme Court releases opinions to the public on Thursdays or other days as necessary.

Running Head—Term of art used when referring to the official case name used for citation purposes that is printed as part of the header information when a case gets published in the official reports.

Signals—Introductory words indicating support, comparison, or contradiction of a stated proposition. Those words are italicized, and generally are followed by a parenthetical statement explaining the relevance of the citation.

Slip Opinion—Appellate court decisions in an 8½" x 11" format using the court's initial pagination, and filed in the electronic case file as a document image linked to the case register in the Appellate Case Management System. Once linked, the slip opinion can be viewed electronically by the public in the Records Office public viewing station, unless the case is confidential. Paper copies of slip opinions also are mailed to the parties.

Summary Disposition—A summary disposition is a disposition of an appeal, a judicial review, or other proceeding pending in an appellate court without full briefing and submission to the courts on the merits of the case. Summary dispositions include dismissals, summary affirmances, and summary reversals. By various statutes governing particular kinds of cases, the Court of Appeals has authority to summarily affirm trial court decisions in particular cases if the court determines that the appeal does not present a substantial question of law.

Supreme Court—The highest court in Oregon and the final arbiter of Oregon law. Its primary function is as law-announcing forum. The Supreme Court has discretionary review, *e.g.*, cases on review from the Court of Appeals; direct review, *e.g.*, death-penalty cases, tax cases, and disciplinary matters; and original discretionary jurisdiction, *e.g.*, mandamus, *quo warranto*, habeas corpus, and certified questions.

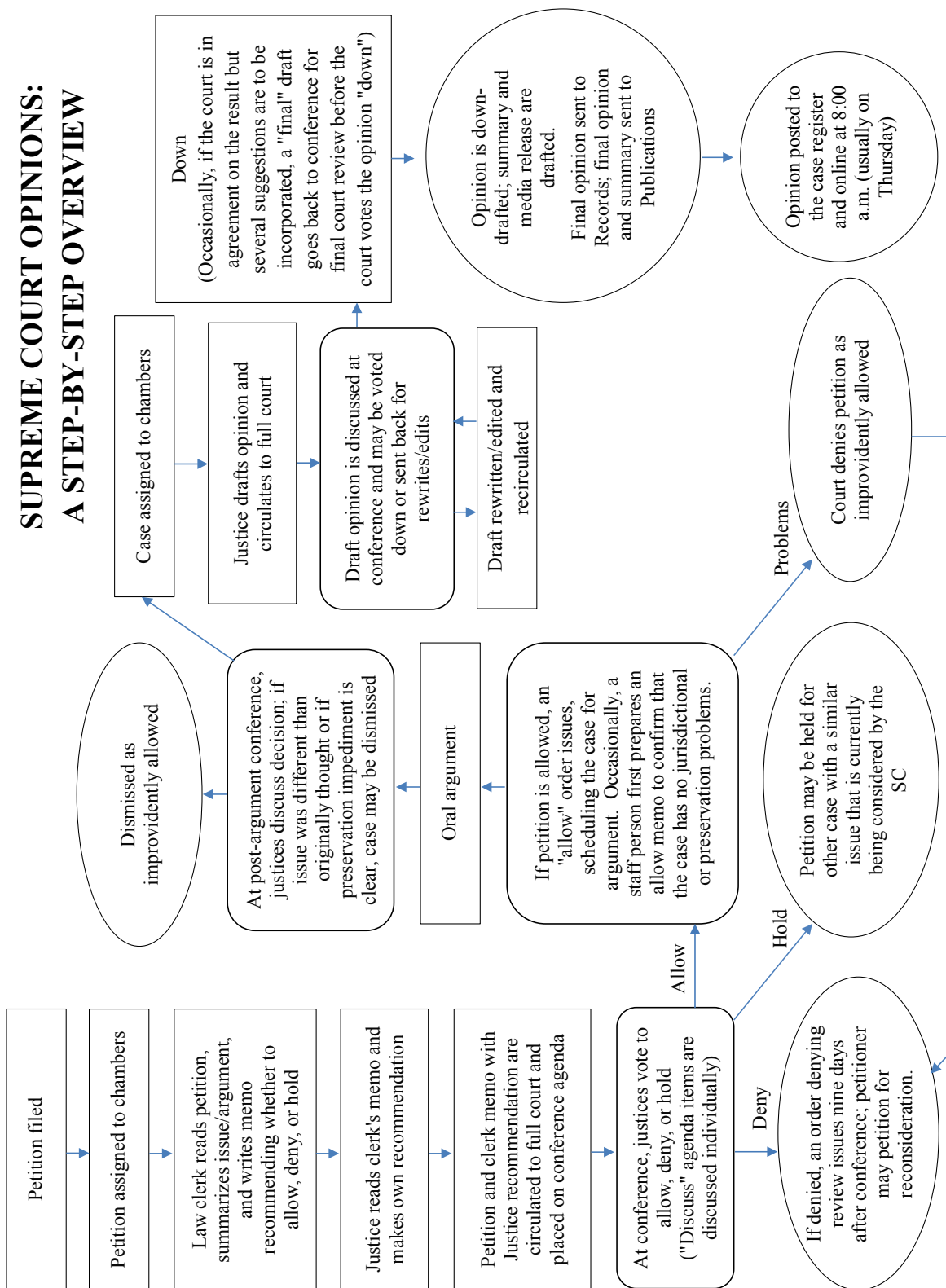
Tag Line—The court's formal disposition of a case. The tag line is listed both on the title page and as the last line of an opinion.

Tax Court—The Tax Court is a special court that has exclusive, statewide jurisdiction to hear only cases that involve Oregon's tax laws, including income taxes, corporate excise taxes, property taxes, timber taxes, cigarette taxes, local budget laws, and property tax limitations. There are no jury trials, and appeals go directly to the Supreme Court. The Oregon Tax Court has two divisions—the Regular Division and the Magistrate Division.

TCR/TCR-MD—Acronyms for the Tax Court rules and Tax Court Rules-Magistrate Division. Those rules are applicable to proceedings in the Oregon Tax Court and supplement statutory requirements. To the degree the wording of a Tax Court Rule mirrors that of an Oregon Rule of Civil Procedure, case interpretations of the Oregon Rules of Civil Procedure are authoritative for applying the Tax Court Rules. For circumstances not addressed by the Tax Court Rules-Magistrate Division, proceedings in the Magistrate Division defer to the guidance of the Tax Court Rules.

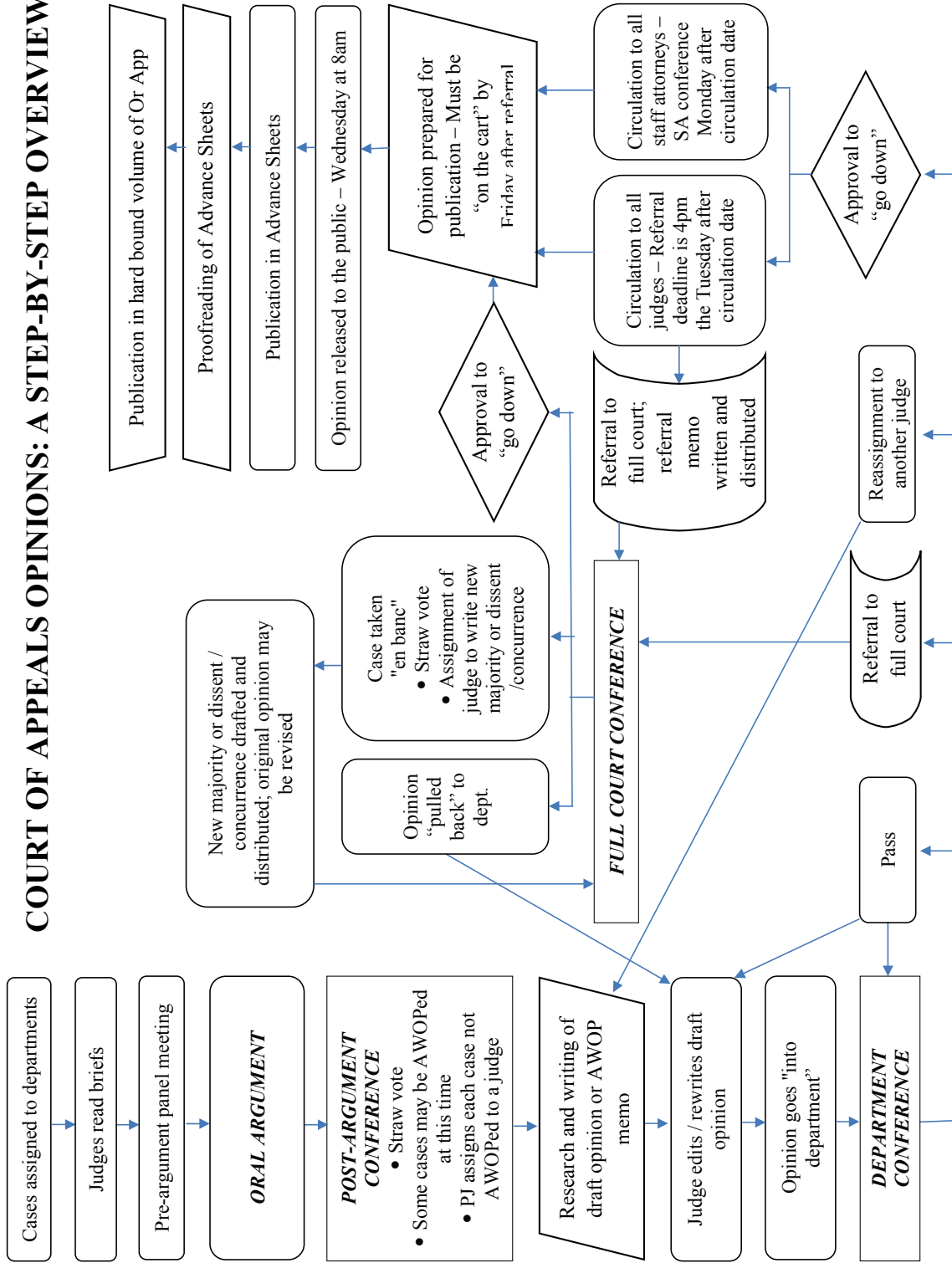
Opinion Overview I

SUPREME COURT OPINIONS: A STEP-BY-STEP OVERVIEW



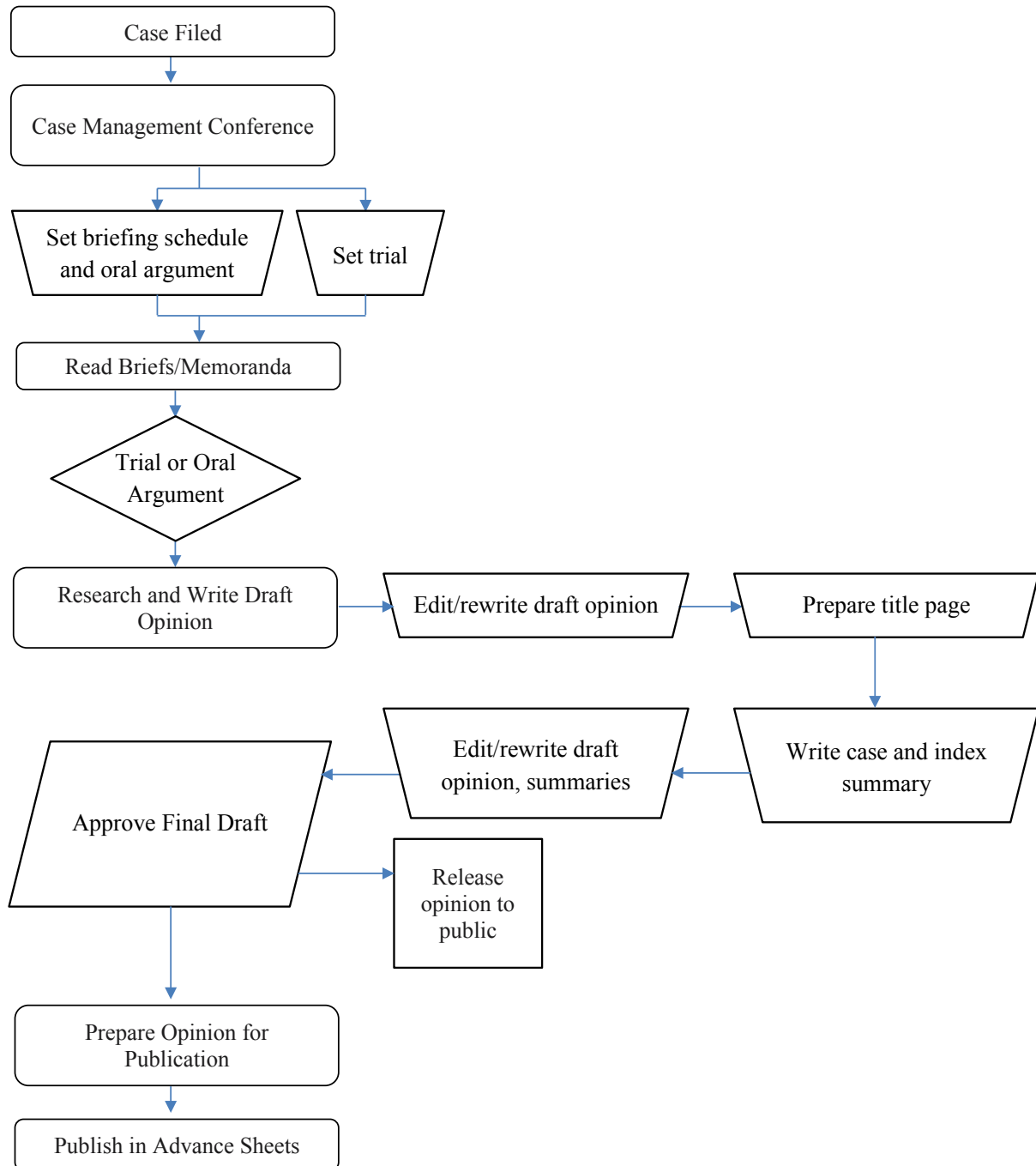
Opinion Overview II

COURT OF APPEALS OPINIONS: A STEP-BY-STEP OVERVIEW



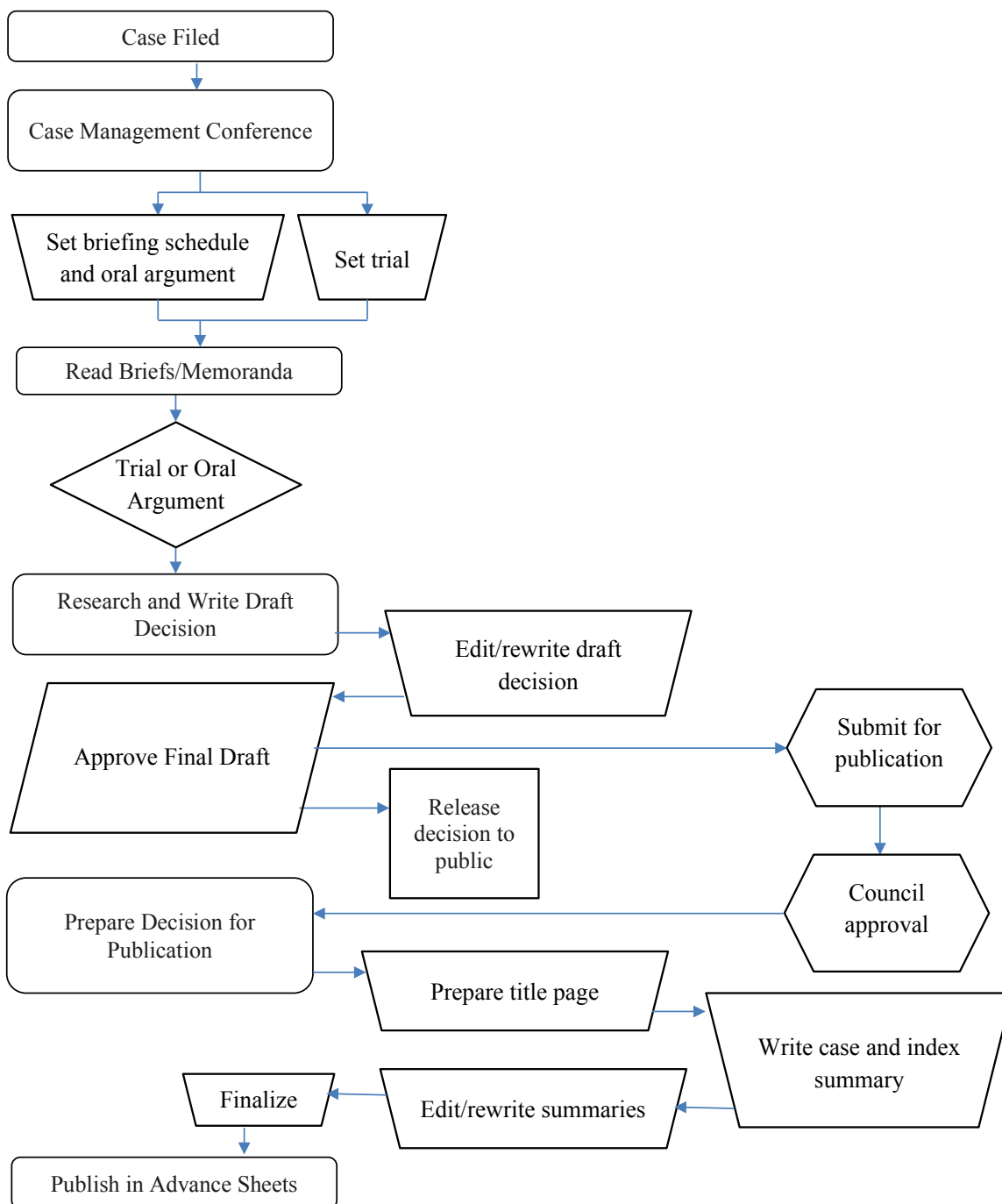
Opinion Overview III

TAX COURT - REGULAR DIVISION OPINIONS: A STEP-BY-STEP OVERVIEW



Opinion Overview IV

TAX COURT - MAGISTRATE DIVISION OPINIONS: A STEP-BY-STEP OVERVIEW



APPENDIX (Standard Proofreader's Marks)

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| <p>∧ Make correction indicated in margin.</p> <p>..... Retain words under which dots appear; Stet write "Stet" in margin.</p> <p>✓✓✓ Unevenly spaced; correct spacing.</p> <p>run in Make no break in the reading; no paragraph.</p> <p>no ¶ No paragraph; sometimes written "run in."</p> <p>out- see copy Here is an omission; see copy.</p> <p>¶ Make a paragraph here.</p> <p>tr Transpose words or letters as indicated.</p> <p>ℓ Take out matter indicated; delete.</p> <p>Ⓔ Take out character indicated and close up.</p> <p>∅ Line drawn through a capital letter means change to lower case.</p> <p>⊂ Close up; no space.</p> <p>⊏ Indent line one em space.*</p> <p># Insert a space here.</p> <p>⊔ Move this to the left.</p> <p>⊓ Move this to the right.</p> <p>⊐ Raise to the proper position.</p> <p>⊑ Lower to proper position.</p> <p>Qu? Query; is this right?</p> <p>l.c. Put in lower case (small letters).</p> <p>u.c. Set in capitals.</p> | <p>rom Change to roman (not bold or italic).</p> <p>ital. Change to italic.</p> <p>≡ Under letter or word means capitalize.</p> <p>≡ Under letter or word means small caps.</p> <p>— Under letter or word means italic.</p> <p>⚡ Under letter or word means boldface.</p> <p>∧, Insert comma.</p> <p>;/ Insert semicolon.</p> <p>:/ Insert colon.</p> <p>⊙ Insert period.</p> <p>/?/ Insert interrogation mark.</p> <p>!/ Insert exclamation mark.</p> <p>=/ Insert hyphen.</p> <p>✓' Insert apostrophe.</p> <p>✓" Insert quotation marks.</p> <p>✓² Insert superscript letter or number.</p> <p>✓₂ Insert subscript letter or number.</p> <p>[/] Insert brackets.</p> <p>(/) Insert parentheses.</p> <p>— Insert dash.</p> <p>≡ Insert parallel dash (equal sign).</p> <p>Ⓢ Spell out.</p> |
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*An em space is a typesetter's space equal to about 1/6 inch.

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