

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of the Adoption)
of Temporary Amendments to) Chief Judge Order 24-01
Oregon Rules of Appellate)
Procedure 5.50, 6.05, 6.10, 6.15,)
and 6.30)

**ORDER ADOPTING TEMPORARY AMENDMENTS TO OREGON RULES OF APPELLATE
PROCEDURE 5.50, 6.05, 6.10, 6.15, AND 6.30**

Pursuant to ORAP 1.10(3), the Court of Appeals may, from time to time, adopt temporary rules and temporary amendments to the Oregon Rules of Appellate Procedure.

By this order, the Court of Appeals adopts temporary amendments to Rules 5.50, 6.05, 6.10, 6.15, and 6.30. The purpose of the amendments is to allow oral argument by self-represented litigants for cases set for submission on or after April 1, 2024.

The amendments are shown on the attached pages. Deleted material is shown in ~~strikeout~~ print; added material is shown in underline print.

The amendments adopted by this order become effective on January 17, 2024. They will expire on December 31, 2024, if not previously adopted as permanent amendments or superseded by the adoption of other rules.

Dated this 17th day of January 2024.


Erin Lagesen, Chief Judge

Rule 5.50
THE EXCERPT OF RECORD

(1) Except in the case of a self-represented party, the appellant must include in the opening brief an excerpt of record.¹ The parties to an appeal are encouraged to confer regarding the content of the excerpt of record, including whether to file a joint excerpt of record to be included in the opening brief.

(2) The excerpt of record must contain:²

(a) The judgment or order on appeal or judicial review.

(b) Any written or oral rulings by the lower tribunal or agency addressing the issues presented by the assignments of error.

(c) Any pleading or excerpt of pleadings, particular part of the transcript, exhibit, evidentiary submission and other filing necessary for reviewing and understanding the assignments of error in advance of oral argument, if the parties anticipate that the case will be orally argued.³

(d) If preservation of error is or is likely to be disputed in the case, parts of memoranda and the transcript pertinent to the issue of preservation presented by the case.

(e) A copy of the eCourt Case Information register of actions, if the case arose in an Oregon circuit court.

(f) In criminal cases in which the defendant appealed after entering a conditional plea of guilty or no contest under [ORS 135.335\(3\)](#), the defendant must include in the excerpt of record the writing in which the defendant reserved for review on appeal the trial court's adverse determination of a pretrial motion.

(3) The excerpt of record must not contain memoranda of law filed in the trial court unless such memoranda are pertinent to a disputed or likely to be disputed issue of preservation.

(4) A respondent may file, as part of the respondent's brief, a supplemental excerpt of record containing those materials required by subsection (2) of this rule that were omitted from the excerpt of record.

(5) The excerpt of record and any supplemental excerpt of record must be in the following form:

(a) All documents or parts of documents must be copies of documents included in the record, rather than summarized or paraphrased. Omissions, if not apparent, must be noted. No matter may be omitted if to do so would change the meaning of the matter included.

(b) Contents must be set forth in chronological order, except that the OECl case register must be the last document in the excerpt of record. The excerpt must be consecutively paginated, with the first page being page ER-1. The excerpt must begin with an index organized chronologically, describing each item and identifying where the item may be found in the trial court or agency record, and the page where the item may be found in the excerpt. The index may include bookmarks as described in [ORAP 16.50](#). A supplemental excerpt of record must substantially conform to the same requirements, except that a supplemental excerpt must be paginated using "SER," e.g., SER-1, SER-2, SER-3.

(c) The materials included must be reproduced on 8-1/2 x 11 inch white paper by any duplicating or copying process that produces a clear, black, legible image.

(d) The excerpt of record must comply with the applicable requirements of [ORAP 5.05](#).

(6) Self-represented parties are not required to file an excerpt of record or a supplemental excerpt of record. If a self-represented party files an excerpt of record or a supplemental excerpt of record, it must contain only those documents specified in [ORAP 5.50\(2\)\(a\) and \(b\)](#), must contain no other documents, and must otherwise comply with this rule.⁴

(7) The appellate court may strike any excerpt of record or supplemental excerpt of record that does not substantially comply with the requirements of this rule.

¹ Any brief containing an excerpt of record filed through the eFiling system that exceeds 25 megabytes must be filed in compliance with [ORAP 16.15\(1\)](#).

² For other requirements for the excerpt of record in Land Use Board of Appeals cases, see [ORAP 4.67](#).

³ See [Appendix 5.50](#), which sets forth examples of documents that a party should consider including in the excerpt of record depending on the nature of the issues raised in the briefs. The full record is available and used by the court after submission of a case; therefore, the excerpt of record need include only those parts of the record that will be helpful to the court and the parties in preparing for and conducting oral argument.

~~⁴ Under ORAP 6.05(4), cases in which a self-represented party files a brief are submitted without argument by any party. For that reason, any excerpt or supplemental excerpt of record submitted by a self-represented party shall not contain any of the documents otherwise required by ORAP 5.50(2)(e) to (f) to assist the appellate court in preparing for oral argument.~~

Rule 6.05
REQUEST FOR ORAL ARGUMENT;
SUBMISSION WITHOUT ARGUMENT

- (1) This rule applies to proceedings in the Court of Appeals.
- (2) (a) The Administrator will send the parties notice of the date that a case is scheduled to be submitted to the court ("the submission date"). The notice will include a form "Response to Notice of Submission" requesting the information described below. Within 14 days of receiving the notice, any party requesting oral argument must complete, file, and serve on every party to the appeal the form "Response to Notice of Submission." The information required by the form Response to Notice of Submission is the following:
- (i) that the party requests oral argument;
 - (ii) the name of the attorney or self-represented party who will argue the case;
 - (iii) whether the party requests in-person oral argument as described in [ORAP 6.30\(1\)\(a\)](#);¹
 - (iv) whether the party has conferred with all other parties regarding in-person oral argument and, if so, whether any party objects.
- (b) Submission will occur as follows:
- (i) If no party files a timely request for oral argument, the case shall be submitted on the briefs on the submission date without oral argument, unless the court directs otherwise.
 - (ii) Except as otherwise provided in subparagraph (iii), if a timely request for oral argument is made, then the case will be set for remote argument pursuant to [ORAP 6.30](#) on the submission date and all parties who have filed a brief may argue.
 - (iii) Unless the court determines that remote argument better meets the needs of the court, (a) if a party submits a timely request for in-person argument, and certifies that the party has conferred with all other parties and that no party objects to in-person argument, or (b) if all parties submit requests for in-person argument, then the case will be set for in-person argument pursuant to [ORAP 6.30](#) on the submission date and all parties who have filed a brief may argue.

¹ Self-represented parties in custody may not request in-person arguments. The court will instead set the case for remote argument pursuant to ORAP 6.30(2).

(iv) Notwithstanding subparagraph (iii), a party may move the court for an order that an oral argument should proceed in person. The motion must be filed within seven days after the deadline for filing a Response to Notice of Submission and must explain the circumstances that support the request and demonstrate good cause for arguing in-person; good cause does not include a mere preference for in-person argument. Any party may file a response to the motion; the response must be filed within seven days after the filing of the motion.

(3) Notwithstanding subsection (2) of this rule, in any case, the court may, on its own motion, determine that the needs of the court will be best served by either in-person argument or remote argument, and order that the parties appear for argument in the manner directed. If the court orders the parties to appear remotely after the case has previously been set for in-person argument under subparagraph (2)(b)(iii), any party may file a motion as described in subparagraph (2)(b)(iv) within a reasonable time of the court's order.

~~(4) Notwithstanding subsection (2) of this rule, if a self-represented party files a brief, the case will be submitted without argument by any party. An attorney representing himself or herself is not considered to be a self-represented party for the purpose of this rule.~~

(54) Notwithstanding subsection (2) of this rule, when a respondent submits an answering brief confessing error as to all assignments of error and not objecting to the relief sought in the opening brief, the respondent shall so inform the court by letter when the brief is filed or at any time thereafter. On receipt of respondent's notice that a brief confesses error, the case will be submitted without oral argument. The appellant may by letter bring to the court's attention that a respondent's brief appears to confess error. If the court concurs, the case will be submitted without oral argument.

Rule 6.10
WHO MAY ARGUE;
FAILURE TO APPEAR AT ARGUMENT

(1) A party may present oral argument only if the party has filed a brief.

(2) An *amicus curiae* may present oral argument only if permitted by the court on motion or on its own motion.

(3) An attorney who was a witness for a party, except as to merely formal matters such as attestation or custody of an instrument, shall not argue the cause without leave of the court.

(4) Only In the Court of Appeals, only self-represented parties and active members of the Oregon State Bar shall argue unless the court, on motion filed not less than 21 days before the date for argument, orders otherwise. If the court has allowed a lawyer from another

jurisdiction to appear on appeal for a particular case under [ORAP 8.10\(4\)](#), the lawyer does not need leave of the court to participate in oral argument of the case.

(5) In the Supreme Court, only active members of the Oregon State Bar shall argue unless the court, on motion filed not less than 21 days before the date of argument, orders otherwise. If the court has allowed a lawyer from another jurisdiction to appear on appeal for a particular case under ORAP 8.10(4), the lawyer does not need leave of the court to participate in oral argument of the case.

(56) (a) After any party has filed and served a request for oral argument pursuant to ORAP 6.05(2), any party who decides to waive oral argument or cannot attend oral argument shall give the court and all other parties participating in oral argument at least 48 hours' notice that the party will not be appearing for oral argument.

(b) If a party fails to appear at oral argument, the court may deem the cause submitted without oral argument as to that party. A party's failure to appear shall not preclude oral argument by any other party.

(c) If a party fails to give at least 48 hours' notice of nonappearance at argument, the court may order counsel for that party to pay the costs and attorney fees that reasonably would not have been incurred but for failure to give timely notice of nonappearance.

Rule 6.15 PROCEDURE AT ORAL ARGUMENT

(1) In all cases in the Supreme Court:

(a) The appellant, petitioner, or petitioner on review shall have not more than 30 minutes to argue; and the respondent or respondent on review shall have not more than 30 minutes to argue.

(b) The appellant, petitioner, or petitioner on review shall argue first and may reserve not more than 10 minutes of the time allowed for argument in which to reply.

(c) If there are two or more parties on one side, they shall divide their allotted time among themselves, unless the court orders otherwise.

(2) (a) Unless the court otherwise orders, on oral argument in the Court of Appeals in all cases the appellant or petitioner shall have not more than 15 minutes and the respondent shall have not more than 15 minutes to argue.

(b) The appellant or petitioner may reserve not more than five minutes of the time allowed for argument in which to reply.

(3) A motion for additional time for argument shall be filed at least seven days before the time set for argument.

(4) No point raised by a party's brief shall be deemed waived by the party's failure to present that point in oral argument.

(5) For the purpose of this rule, a cross-appellant shall be deemed a respondent.

(6) It is the general policy of Oregon appellate courts to prohibit reference at oral argument to any authority not cited either in a brief or in a pre-argument memorandum of additional authorities.¹ If a party intends to refer in oral argument to an authority not previously cited, counsel or a self-represented party shall inform the court at the time of argument and shall make a good faith effort to inform opposing counsel or self-represented party of the authority at the earliest practicable time. The court may, in its discretion, permit reference at argument to that authority and may give other parties leave to file a post-argument memorandum of additional authorities or a memorandum in response.

(7) If counsel a party desires to have present at oral argument an exhibit that has been retained by the trial court, it is counsel's the party's responsibility to arrange to have the exhibit transmitted to the appellate court.²

¹ See [ORAP 5.85](#) regarding memoranda of additional authorities.

² See [ORAP 3.25](#) regarding arranging to have exhibits transmitted to the appellate court.

Rule 6.30
SPECIAL RULES FOR ORAL ARGUMENTS:
MODE OF ARGUMENT AND ARGUMENTS CONDUCTED BY REMOTE MEANS

(1) For purposes of this rule,

(a) "In person" refers to an oral argument to be conducted with all parties appearing in person, in either a courtroom or an alternative physical location being used as a courtroom; and

(b) "Remote means" refers to an oral argument conducted by video conference with all parties and justices or judges appearing remotely.

(2) This subsection applies to proceedings in the Court of Appeals.

(a) Except as otherwise provided in [ORAP 6.05\(2\)\(b\)\(iii\)](#), [ORAP 6.05\(2\)\(b\)\(iv\)](#), or [ORAP 6.05\(3\)](#), the case will be scheduled for argument by remote means.

(b) If an argument scheduled to proceed by remote means cannot occur due to technical difficulties, the court will reset the argument for a later date.

(c) A live audio and video feed of oral arguments that are being conducted by remote means will be available in the principal location for the sitting of the Court of Appeals.¹ Seating in the courtroom at the principal location to view a live audio and video feed of oral arguments that are being conducted by remote means will be limited to the number of persons that is posted at the Marshal's Station at the building entrance.

(3) This subsection applies to proceedings in the Supreme Court.

(a) The court will ordinarily schedule oral argument to be conducted in person.

(b) (i) A party may file a motion requesting that an argument scheduled to be conducted in person be conducted by remote means. Such a motion must be filed at least 21 days before the scheduled date of the oral argument and must state the scheduled date and time of the oral argument and explain the circumstances that support the request.

(ii) Any party may file a response to the motion. The response must be filed within seven days after the filing of the motion.

(4) Except as otherwise provided in [ORAP 8.35](#), electronic recording of an appellate oral argument being conducted by remote means is not permitted without express prior approval of the court. "Electronic recording" includes, but is not limited to, video recording, audio recording, live streaming, and still photography by cell phone, tablet, computer, camera, recorder, or any other means.

(5) Absent permission from the court or, in the Court of Appeals, the presiding judge of the panel to proceed otherwise, when appearing for an oral argument to be conducted by remote means, all attorneys, [self-represented parties](#), and court officials must wear appropriate attire, remain on camera, and conduct themselves as if they were appearing in person in the courtroom.

¹ See Chief Justice Order 22-020 (providing that the principal location for the sitting of the Court of Appeals is currently 1163 State Street, Salem, OR 97301) or any subsequent order of the Chief Justice that amends or supersedes that order.