

ORAP COMMITTEE 2020
Technical Proposals
2/7/2020

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ORAP COMMITTEE 2020

PROPOSAL NO.: 4
PROPOSER: Julie E. Smith, Staff Attorney, Court of Appeals
AMENDING RULE(S): ORAP 5.45 n 3 -- Replace Citation
DATE SUBMITTED: December 12, 2019 (edited Feb 3, 2020)

EXPLANATION:

Nonsubstantive modification to update citation.

RULE AS AMENDED:

Rule 5.45 ASSIGNMENTS OF ERROR AND ARGUMENT

(1) Assignments of error are required in all opening briefs of appellants and cross-appellants. No matter claimed as error will be considered on appeal unless the claim of error was preserved in the lower court and is assigned as error in the opening brief in accordance with this rule, provided that the appellate court may, in its discretion, consider a plain error.¹

(2) Each assignment of error must be separately stated under a numbered heading. The arrangement and form of assignments of error, together with reference to pages of the record, should conform to the illustrations in [Appendix 5.45](#).

(3) Each assignment of error must identify precisely the legal, procedural, factual, or other ruling that is being challenged.

(4) (a) Each assignment of error must demonstrate that the question or issue presented by the assignment of error timely and properly was raised and preserved in the lower court. The court may decline to consider any assignment of error that requires the court to search the record to find the error or to determine if the error properly was raised and preserved. Under the subheading "Preservation of Error":

(i) Each assignment of error, as appropriate, must specify the stage in the proceedings when the question or issue presented by the assignment of error

was raised in the lower court, the method or manner of raising it, and the way in which it was resolved or passed on by the lower court.

(ii) Each assignment of error must set out pertinent quotations of the record where the question or issue was raised and the challenged ruling was made, together with reference to the pages of the transcript or other parts of the record quoted or to the excerpt of record if the material quoted is set out in the excerpt of record. When the parts of the record relied on under this clause are lengthy, they must be included in the excerpt of record instead of the body of the brief.

(iii) If an assignment of error challenges an evidentiary ruling, the assignment of error must quote or summarize the evidence that appellant believes was erroneously admitted or excluded. If an assignment of error challenges the exclusion of evidence, appellant also must identify in the record where the trial court excluded the evidence and where the offer of proof was made; if an assignment of error challenges the admission of evidence, appellant also must identify where in the record the evidence was admitted.

(b) Where a party has requested that the court review a claimed error as plain error, the party must identify the precise error, specify the state of the proceedings when the error was made, and set forth pertinent quotations of the record where the challenged error was made.

(5) Under the subheading "Standard of Review," each assignment of error must identify the applicable standard or standards of review, supported by citation to the statute, case law, or other legal authority for each standard of review.²

(6) Each assignment of error must be followed by the argument. If several assignments of error present essentially the same legal question, the argument in support of them may be combined so far as practicable.

(7) The court may decline to exercise its discretion to consider plain error absent a request explaining the reasons that the court should consider the error.³

¹ For an error to be plain error, it must be an error of law, obvious and not reasonably in dispute, and apparent on the record without requiring the court to choose among competing inferences; in determining whether to exercise its discretion to consider an error that qualifies as a plain error, the court takes into account a non-exclusive list of factors, including the interests of the parties, the nature of the case, the gravity of the error, and the ends of justice in the particular case. *See State v. Vanornum*, 354 Or 614, 629-30, 317 P3d 889 (2013). *See also* ORS 138.257(2): "Subject to Article VII (Amended), section 3, Oregon Constitution, the appellate court shall not reverse, modify or vacate a trial court judgment or order if there is little likelihood that any error

affected the outcome."

² Standards of review include but are not limited to *de novo* review and substantial evidence for factual issues, errors of law and abuse of discretion for legal issues, and special statutory standards of review such as those found in the Administrative Procedures Act, [ORS 183.400\(4\)](#), and [ORS 183.482\(7\) and \(8\)](#). See also [ORS 19.415\(1\)](#), which provides that, generally, "upon an appeal in an action or proceeding, without regard to whether the action or proceeding was triable to the court or a jury," the court's review "shall be as provided in section 3, Article VII (Amended) of the Oregon Constitution"; [ORS 19.415\(3\)\(b\)](#) regarding discretion of the Court of Appeals to try the cause *de novo* or make one or more factual findings anew on appeal in some equitable proceedings; see also [ORAP 5.40\(8\)](#) concerning appellant's request for the court to exercise *de novo* review and providing a list of nonexclusive items Court of Appeals may consider in deciding whether to exercise its discretion.

³ See [State v. Ardizzone, 270 Or App 666, 673, 349 P3d 597, rev den, 358 Or 145 \(2015\) \(declining to review for plain error absent a request from the appellant\).](#) ~~[State v. Tilden, 252 Or App 581, 587-94, 288 P3d 567 \(2012\) \(discussing cases in which Court of Appeals declined to review for plain error absent a request from the appellant\).](#)~~

ORAP COMMITTEE 2020

PROPOSAL NO.: 8

PROPOSER: Hon Robyn Ridler Aoyagi, Court of Appeals; Lisa Norris-Lampe, Appellate Legal Counsel, Supreme Court

AMENDING RULE(S): ORAP 6.10 -- Correct Typographical Errors

DATE SUBMITTED: May 30, 2019; December 10, 2019

EXPLANATION:

Corrects typographical errors in rule.

RULE AS AMENDED:

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 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) (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.

Proposal #8 -- ORAP 6.10 -- Correct Typographical Errors

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(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.

TECHNICAL

ORAP COMMITTEE 2020

PROPOSAL NO.: 12 A & B

PROPOSER: Lisa Norris-Lampe, Appellate Legal Counsel

AMENDING: ORAP 9.05 -- Petition for Supreme Court Review of Court of Appeals Decision

DATE: December 19, 2019 (edited Jan 23, 2020)

EXPLANATION:

ORAP 9.05(2) governs the filing of petitions for review (PTRVs) in the Supreme Court; paragraph (b) of that rule provides that the Supreme Court may grant an extension of time to file a PTRV. This proposal would clarify the rules that govern the filing of such a motion for extension of time.

Summary of Issue and Proposed Changes:

AGENDA ITEM NO. 12 A:

Although ORAP 9.05(2) implicitly conveys that a motion for extension of time (MOET) should be filed in the Supreme Court, many such motions are filed each year in the Court of Appeals, instead. The proposed amendment therefore would clarify that any MOET to file a PTRV must be filed in the Supreme Court.

AGENDA ITEM NO. 12 B:

The proposal also would delete the text of FN 2, which excludes ORAP 6.25(5) from the timing rules, replacing it with an inclusive reference to ORAP 6.25(2) in new subparagraph (c). (I think that it is easier for our users if exceptions to rules are part of the rules, rather than set out in footnotes.)

RULE AS AMENDED:

Edited version (new text in **{braces/boldface/underscore}**; omitted text in *[brackets/italics]*):

Rule 9.05

PETITION FOR SUPREME COURT REVIEW OF COURT OF APPEALS DECISION

* * * * *

(2) Time for Filing and for Submitting Petition for Review

(a) Except as provided in ORS 19.235(3) and ORAP 2.35(4), any party seeking to obtain review of a decision of the Court of Appeals shall file a petition for review in the Supreme Court within 35 days after the date of the decision of the Court of Appeals.*[FNI, Or, alternatively, edit FN 1]*

{(b) A party seeking additional time to file a petition for review shall file a motion for extension of time in the Supreme Court, which that court may grant}*[The Supreme Court may grant an extension of time to file a petition for review.]*

{(c)[b]}(i) If a timely petition for reconsideration of a decision of the Court of Appeals is filed **{under ORAP 6.25(2)}** by any party, the time for filing a petition for review concerning that decision for all parties shall not begin to run until the Court of Appeals issues its written disposition of the petition for reconsideration. If a party obtains an extension of time to file a petition for reconsideration and does not file a petition for reconsideration within the time allowed, the time for filing a petition for review shall begin to run on expiration of the extension of time.

(ii) If a petition for review is filed during the time in which a petition for reconsideration in the Court of Appeals may be filed, the petition for review will not be submitted to the Supreme Court until the time for filing a petition for reconsideration expires.

(iii) If a petition for review is filed after the filing of a timely petition for reconsideration, the petition for review will not be submitted to the

Supreme Court until the Court of Appeals issues its written disposition of the petition for reconsideration.[FN 2]

- (~~d~~)[c]) (i) If a party files a petition for review after the appellate judgment has issued, the party must file with the petition a motion to recall the appellate judgment. The petition and the motion must be filed within a reasonable time after the appellate judgment has issued. The motion to recall the appellate judgment must explain why the petition for review was not timely filed. The party need not file a separate motion for relief from default.
- (ii) A party filing a motion to recall the appellate judgment in a criminal case, in addition to serving all other parties to the appeal, shall serve a copy of the motion on the district attorney.

[2] *Paragraph (2)(b) of this rule does not apply to a motion for reconsideration filed under ORAP 6.25(5).]*

Clean Version:

Rule 9.05

PETITION FOR SUPREME COURT REVIEW OF COURT OF APPEALS DECISION

* * * * *

(2) Time for Filing and for Submitting Petition for Review

- (a) Except as provided in ORS 19.235(3) and ORAP 2.35(4), any party seeking to obtain review of a decision of the Court of Appeals shall file a petition for review in the Supreme Court within 35 days after the date of the decision of the Court of Appeals. [Alternative, edit FN 1]
- (b) A party seeking additional time to file a petition for review shall file a motion for extension of time in the Supreme Court, which that court may grant
- (c)
 - (i) If a timely petition for reconsideration of a decision of the Court of Appeals is filed under ORAP 6.25(2) by any party, the time for filing a petition for review concerning that decision for all parties shall not begin to run until the Court of Appeals issues its written disposition of the petition for reconsideration. If a party obtains an extension of time to file a petition for reconsideration and does not file a petition for reconsideration within the time allowed, the time for filing a petition for review shall begin to run on expiration of the extension of time.
 - (ii) If a petition for review is filed during the time in which a petition for reconsideration in the Court of Appeals may be filed, the petition for review will not be submitted to the Supreme Court until the time for filing a petition for reconsideration expires.
 - (iii) If a petition for review is filed after the filing of a timely petition for reconsideration, the petition for review will not be submitted to the Supreme Court until the Court of Appeals issues its written disposition of the petition for reconsideration.
- (d)
 - (i) If a party files a petition for review after the appellate judgment has issued, the party must file with the petition a motion to recall the

appellate judgment. The petition and the motion must be filed within a reasonable time after the appellate judgment has issued. The motion to recall the appellate judgment must explain why the petition for review was not timely filed. The party need not file a separate motion for relief from default.

- (ii) A party filing a motion to recall the appellate judgment in a criminal case, in addition to serving all other parties to the appeal, shall serve a copy of the motion on the district attorney.

TECHNICAL

ORAP COMMITTEE 2020

PROPOSAL NO.: 14
PROPOSER: Jean Ann Quinn, Staff Attorney, Court of Appeals
AMENDING RULE(S): ORAP 10.25(1): Conform to Amended Statute
DATE SUBMITTED: November 12, 2019

EXPLANATION:

Amend ORAP 10.25(1) to conform to amendment made to ORS 138.261 by the 2019 Legislative Assembly. Or Laws 2019, ch 399, § 1. The amendment is effective with respect to appeals "taken on or after the effective date of this 2019 Act [January 1, 2020] for which the time limit in ORS 138.071 has not expired." *Id.* § 8(2).

RULE AS AMENDED:

Rule 10.25

EXPEDITED APPEAL OF CERTAIN PRETRIAL ORDERS IN CRIMINAL CASES

- (1) This rule applies to a pretrial appeal under ORS 138.045(1)(a), (b), or (d) when the defendant is charged with a felony and is in custody, and the trial court has dismissed or set aside the accusatory instrument or suppressed evidence.¹
- (2) In all cases subject to this rule:
- (a) The case caption of any brief, motion, petition, or other paper filed with the court shall include the words "EXPEDITED APPEAL UNDER ORS ____" and identifying the statute authorizing the expedited appeal.
 - (b) Appellant's opening brief shall be due 35 days after the transcript settles. Failure to file the opening brief within the prescribed time will result in automatic dismissal of the appeal.
 - (c) Respondent's answering brief shall be due 35 days after appellant's opening brief is served and filed. If respondent fails to file an answering brief within the prescribed time, the appeal will be submitted on appellant's opening brief and oral argument, and respondent will not be allowed to argue the case.

(d) Absent extraordinary circumstances, the court will not grant an extension of time or reschedule oral argument.

(e) A motion made before oral argument will not toll the time for transmitting the record, filing briefs, or hearing oral argument.

¹ See ORS 138.261.

TECHNICAL

ORAP COMMITTEE 2020

PROPOSAL NO.: 15

PROPOSER: Lisa Norris-Lampe, Appellate Legal Counsel

AMENDING: ORAP 11.25, 11.27, 11.30, 11.32, 12.25 -- Renumbering Several "Original Proceeding" and "Special Supreme Court" Rules

DATE: December 19, 2019

EXPLANATION:

ORAP Chapter 11 is entitled "Original Proceedings in the Supreme Court," and ORAP Chapter 12 is entitled "Special Supreme Court Rules." Over time, several provisions that were more appropriate for inclusion in Chapter 12 were added to Chapter 11, instead (additional explanation below). This memo proposes moving and renumbering several of the rules.

Summary of Issue and Proposed Changes:

The Supreme Court (in its Appellate Case Management System and otherwise) uses five "case class" categories to identify categories of cases filed in the Supreme Court:

- "Appeal": Cases on appeals of court judgment/orders, on petition for review (PTRV) from the Court of Appeals
- "Judicial Review": Cases on judicial reviews of agency decisions, on PTRV from the Court of Appeals
- "Original Proceedings": Direct review proceedings for which the Oregon Constitution vests original jurisdiction in the Supreme Court (limited to mandamus, habeas corpus, quo warranto, and reapportionment proceedings)
- "Professional Regulation": All matters filed with the court that pertain to the admission, discipline, and reinstatement of lawyers, and judicial fitness and disability matters.

Proposal # 15 -- ORAP 11.25, 11.27, 11.30, 11.32, 12.25 -- Renumbering Several "Original Proceeding" and "Special Supreme Court" Rules

- "Direct Review": All other direct review matters that do not qualify as "original proceedings" or "professional regulation" matters.

Consistently with the above-described class description for "original proceedings," contrasted against professional regulation and other types of direct review cases, the proposal set out below would move four current rules from current Chapter 11 to Chapter 12, as follows:

- Rule 11.25, Bar Admission, Reinstatement, and Disciplinary Proceedings*
- Rule 11.27, Judicial Disability and Disciplinary Proceedings
- Rule 11.30, Ballot Title Review*¹
- Rule 11.32, Voters' Pamphlet Review

The proposal would retain the subnumbering of each rule (*e.g.*, .25, .27, etc.), but change the preceding title number (*e.g.*, 12.25, 12.27, etc.).

Then, to accommodate retaining the subnumbering, I propose changing the number of one existing rule in Chapter 12 (not used very often):

- Rule 12.25, Energy Facility Siting and Public Utility Commission (to change to Rule 12.35).

* Note: I am submitting separate proposals that would amend the wording of each of these rules.

RULE AS AMENDED:

Edited version (new text in **braces/boldface/underscore**); omitted text in *[brackets/italics]*:

Moving Rules from Chapter 11 to Chapter 12:

Rule **12.25***[11.25]*

BAR ADMISSION, REINSTATEMENT, AND DISCIPLINARY PROCEEDINGS

* * * * *

Rule **12.27***[11.27]*

JUDICIAL DISABILITY AND DISCIPLINARY PROCEEDINGS

* * * * *

Rule **12.30***[11.30]*

BALLOT TITLE REVIEW

* * * * *

Rule **12.32***[11.32]*

VOTERS' PAMPHLET EXPLANATORY STATEMENT REVIEW

* * * * *

Renumbering Additional Rule in Current Chapter 12:

Rule **12.35***[12.25]*

EXPEDITED JUDICIAL REVIEW OF ORDERS OF THE ENERGY FACILITY
SITING COUNCIL AND THE PUBLIC UTILITY COMMISSION

Clean Version:

Moving Rules from Chapter 11 to Chapter 12:

Rule 12.25

BAR ADMISSION, REINSTATEMENT, AND DISCIPLINARY PROCEEDINGS

* * * * *

Rule 12.27

JUDICIAL DISABILITY AND DISCIPLINARY PROCEEDINGS

* * * * *

Rule 12.30

BALLOT TITLE REVIEW

* * * * *

Rule 12.32

VOTERS' PAMPHLET EXPLANATORY STATEMENT REVIEW

* * * * *

Renumbering Additional Rule in Current Chapter 12:

Rule 12.35

EXPEDITED JUDICIAL REVIEW OF ORDERS OF THE ENERGY FACILITY
SITING COUNCIL AND THE PUBLIC UTILITY COMMISSION

ORAP COMMITTEE 2020

PROPOSAL NO.: 16

PROPOSER: Lisa Norris-Lampe, Appellate Legal Counsel

AMENDING: ORAP 11.25 -- Bar Admission, Reinstatement, and Disciplinary Proceedings

DATE: December 19, 2019 (edited Jan 27, 2020)

EXPLANATION:

ORAP 11.25 governs the filing of requests/petitions/responses, records, and briefs in cases on review of opinions or decisions of trial panels of the Disciplinary Board or its Adjudicator, or the Board of Bar Examiners (BBX). The changes proposed in this amendment are intended to make the rule consistent with several recent changes to the Bar Rules of Procedure (BRs), to streamline certain proceedings on review from the BBX, and otherwise to clarify and make consistent (to the extent possible) various provisions in the rule.

Summary of Issue and Proposed Changes:

Subsection (1) (General): Clarified that a new type of proceeding -- review of interlocutory suspensions ordered by the Disciplinary Board Adjudicator -- are now subject to the rule, per updates to the BRs; clarified references to the BRs, as well as to the Rules for Admission of Attorneys (RFAs), throughout the rule.

Subsection (2) (Bar Proceedings, non-interlocutory suspension): Created a new provision that governs a new type of proceeding under the BRs -- review of interlocutory suspensions ordered by the Disciplinary Board Adjudicator.

Subsection (3) (Bar Proceedings, disciplinary and contested reinstatement): Clarified the specific types of proceedings to which this part of the rule applies; removed the briefing timelines from this subsection and moved them to (and combined them in) new subsection (5), because the same briefing timelines apply to BBX proceedings covered in the next subsection.

Subsection (4) (BBX Character and Fitness Proceedings): Clarified that the BBX need not file a record with the court until a petition is filed; clarified the type of proceeding subject to this rule; clarified various submission and filing timelines. Note: We are also

working with the BBX on adopting some conforming updates to the RFAs, to become effective together with these ORAP changes.

Subsection (5) (Briefing and Argument): Combined material from current subsection (2), together with current subsections (4) and (5), into one newly updated subsection that pertains to both briefing and argument.

Throughout: Other minor wording and punctuation updates.¹

¹ Note: I am submitting a separate proposal that would move this rule to Chapter 12, such that it would be numbered 12.25.

RULE AS AMENDED:

Edited version (new text in **{braces/boldface/underscore}**; omitted text in *[brackets/italics]*):

Rule 11.25

BAR ADMISSION, REINSTATEMENT, AND DISCIPLINARY PROCEEDINGS

(1) As used in this rule[, *the following are parties*]:

(a) **{The following are parties:}**

{i}[a]The Oregon State Bar in a disciplinary, **{interlocutory suspension,}** contested reinstatement, or contested admission proceeding.

{ii}[b]The respondent in a disciplinary **{or interlocutory suspension}** proceeding.

{iii}[c]The applicant in a contested reinstatement proceeding.

{iv}[d]The applicant in a contested admission proceeding.

{b) "BR" refers to the Oregon State Bar Rules of Procedure.

{c) "RFA" refers to the Supreme Court of the State of Oregon - Rules for Admission of Attorneys.}

(2) **{Interlocutory Suspension Proceedings, Review of Adjudicator Order}**

{a) A request concerning review of an order entered by the Bar's Disciplinary Board Adjudicator in an interlocutory suspension proceeding under BR 3.1 shall be filed with the Administrator, with proof of service on all parties and the Disciplinary Board, within 14 days after entry of the order.}

{b) The response is due within 14 days after the request is filed.}

{c) If the request seeks de novo review of the record of proceedings before the Adjudicator, upon receipt of service of the request, the Bar's Disciplinary Counsel shall file the record with the Administrator. The}

preparation, transmission, and service of the record is subject to ORAP 4.20, except that subsections (8) and (9) do not apply. Upon receipt of the record, the Administrator must send written notice to the parties.

(3)[2] Disciplinary and Contested Reinstatement Proceedings{, Review of Trial Panel Opinion}

- (a) A **{request}***[petition]* concerning **{review of}** a *[disciplinary proceeding or a]* trial panel opinion in a **{disciplinary proceeding under BR 10.1}** *[former member's contested reinstatement]* shall be filed with the Administrator, with proof of service on all parties, within 30 days after written notice by the Bar's Disciplinary Board Clerk of receipt of the *[trial panel]* opinion.
- (b) **{A trial panel opinion in a contested reinstatement proceeding under BR 10.3, following court referral under BR 8.9, shall be filed with the Administrator, with proof of service on all parties, upon conclusion of the hearing.}**
- (c) Upon receipt of a request filed under subparagraph (a) or a trial panel opinion filed under subparagraph (b), the***[The]* Bar's Disciplinary Counsel **{shall}***[must]* file the record of the proceedings before the trial panel **{with the Administrator,}** pursuant to BR 10.4. The preparation, transmission, and service of the record is subject to ORAP 4.20, except that subsections (8) and (9) do not apply. Upon receipt of the record, the Administrator must send written notice to the parties.
- [(c) An opening brief shall be due no later than 28 days after the Administrator's notice to the parties of receipt of the record. An answering brief shall be due 28 days after filing of the opening brief. A reply brief, if any, shall be due 14 days after filing of the answering brief.*
- (d) *If a respondent files a petition but then fails to file a brief within the time allowed, the Bar must either:*
- (i) *File a brief within the time allowed for filing an answering brief. The brief shall comply with the rules governing petitions and opening briefs. At the time the brief is filed, the Bar must indicate whether it wishes to waive oral argument and submit the case on the record. Or:*
- (ii) *Submit a letter stating that it wishes the matter submitted to the court on the record without briefing or oral argument.*

Notwithstanding waiver of briefing and oral argument under this paragraph, at the direction of the Supreme Court, the Bar shall file a petition and brief within the time directed by the court.]

(4)(3) Contested Admission Proceedings, Board of Bar Examiners Decision

(a) *The Bar must file the decision of the Board of Bar Examiners on reinstatement with the Administrator pursuant to RFA 9.55. The Bar also must file the record with the Administrator. The preparation, transmission, and service of the record is subject to ORAP 4.20, except that subsections (8) and (9) do not apply. Upon receipt of the record, the Administrator must send written notice to the parties.]*

(a)(b) A petition concerning a **review of a Board of Bar Examiners decision in a contested admission, character and fitness review proceeding** [bar applicant's contested admission] under Rule for Admission 9.60(1) shall be filed with the Administrator, [together with an opening brief,] with proof of service on all parties, within **30** [28] days after the **date that the applicant received notice of the Board's decision, pursuant to RFA 9.55(7)** [Administrator's written notice to the parties of the court's receipt of the record of the proceedings before the Board].

(b) Within 14 days following receipt of service of a petition, the Board must file the record of proceedings before the Board, pursuant to RFA 9.60(2). The preparation, transmission, and service of the record is subject to ORAP 4.20, except that subsections (8) and (9) do not apply. Upon receipt of the record, the Administrator must send written notice to the parties.

(c) *An answering brief shall be due 28 days after filing of the opening brief. A reply brief, if any, shall be due 14 days after filing of the answering brief.]*

(5)(4) Briefing and Argument

(a) A brief in any [of the] proceeding[s] described in **subparagraphs (3) or (4)** [this rule] must conform to ORAP 5.05, ORAP 5.35, and ORAP 9.17(5), except that no excerpt of record is required. The brief must show proof of service on all parties to the proceeding. The Bar shall be served by service on the Bar's Disciplinary Counsel.

(b) In any proceeding described in subparagraphs (3) or (4):

(i) An opening brief shall be due no later than 28 days after the Administrator's notice to the parties of receipt of the record.

- (ii) An answering brief shall be due 28 days after filing of the opening brief.**
- (iii) A reply brief, if any, shall be due 14 days after filing of the answering brief.**
- (c) In any proceeding described in subparagraph (3), if a respondent files a petition but then fails to file a brief within the time allowed, the Bar must either:**
- (i) File a brief within the time allowed for filing an answering brief. The brief shall comply with the rules governing petitions and opening briefs. At the time the brief is filed, the Bar must indicate whether it wishes to waive oral argument and submit the case on the record. Or:**
- (ii) Submit a letter stating that it wishes the matter submitted to the court on the record without briefing or oral argument. Notwithstanding waiver of briefing and oral argument under this paragraph, at the direction of the Supreme Court, the Bar shall file a petition and brief within the time directed by the court.}**

(d)[5]If **{a proceeding described in subparagraphs (3) or (4)}***[the case]* is argued orally, the party who files the opening brief shall argue first.

See ORS 9.536, and Oregon State Bar Rules of Procedure, which are found on the Oregon State Bar's website, <<https://www.osbar.org>>, and in Thomson/West's Oregon Rules of Court.

Clean Version:

Rule 11.25

BAR ADMISSION, REINSTATEMENT, AND DISCIPLINARY PROCEEDINGS

- (1) As used in this rule:
 - (a) The following are parties:
 - (i) The Oregon State Bar in a disciplinary, interlocutory suspension, contested reinstatement, or contested admission proceeding.
 - (ii) The respondent in a disciplinary or interlocutory suspension proceeding.
 - (iii) The applicant in a contested reinstatement proceeding.
 - (iv) The applicant in a contested admission proceeding.
 - (b) "BR" refers to the Oregon State Bar Rules of Procedure.
 - (c) "RFA" refers to the Supreme Court of the State of Oregon - Rules for Admission of Attorneys.
- (2) Interlocutory Suspension Proceedings, Review of Adjudicator Order
 - (a) A request concerning review of an order entered by the Bar's Disciplinary Board Adjudicator in an interlocutory suspension proceeding under BR 3.1 shall be filed with the Administrator, with proof of service on all parties and the Disciplinary Board, within 14 days after entry of the order.
 - (b) The response is due within 14 days after the request is filed.
 - (c) If the request seeks de novo review of the record of proceedings before the Adjudicator, upon receipt of service of the request, the Bar's Disciplinary Counsel shall file the record with the Administrator. The preparation, transmission, and service of the record is subject to ORAP 4.20, except that subsections (8) and (9) do not apply. Upon receipt of the record, the Administrator must send written notice to the parties.
- (3) Disciplinary and Contested Reinstatement Proceedings, Review of Trial Panel Opinion

- (a) A request concerning review of a trial panel opinion in a disciplinary proceeding under BR 10.1 shall be filed with the Administrator, with proof of service on all parties, within 30 days after written notice by the Bar's Disciplinary Board Clerk of receipt of the [*trial panel*] opinion.
 - (b) A trial panel opinion in a contested reinstatement proceeding under BR 10.3, following court referral under BR 8.9, shall be filed with the Administrator, with proof of service on all parties, upon conclusion of the hearing.
 - (c) Upon receipt of a request filed under subparagraph (a) or a trial panel opinion filed under subparagraph (b), the Bar's Disciplinary Counsel shall file the record of the proceedings before the trial panel with the Administrator, pursuant to BR 10.4. The preparation, transmission, and service of the record is subject to ORAP 4.20, except that subsections (8) and (9) do not apply. Upon receipt of the record, the Administrator must send written notice to the parties.
- (4) Contested Admission Proceedings, Board of Bar Examiners Decision
- (a) A petition concerning a review of a Board of Bar Examiners decision in a contested admission, character and fitness review proceeding under Rule for Admission 9.60(1) shall be filed with the Administrator, with proof of service on all parties, within 30 days after the date that the applicant received notice of the Board's decision, pursuant to RFA 9.55(7).
 - (b) Within 14 days following receipt of service of a petition, the Board must file the record of proceedings before the Board, pursuant to RFA 9.60(2). The preparation, transmission, and service of the record is subject to ORAP 4.20, except that subsections (8) and (9) do not apply. Upon receipt of the record, the Administrator must send written notice to the parties.
- (5) Briefing and Argument
- (A) A brief in any proceeding described in subparagraphs (3) or (4) must conform to ORAP 5.05, ORAP 5.35, and ORAP 9.17(5), except that no excerpt of record is required. The brief must show proof of service on all parties to the proceeding. The Bar shall be served by service on the Bar's Disciplinary Counsel.
 - (b) In any proceeding described in subparagraphs (3) or (4):
 - (i) An opening brief shall be due no later than 28 days after the Administrator's notice to the parties of receipt of the record.

- (ii) An answering brief shall be due 28 days after filing of the opening brief.
 - (iii) A reply brief, if any, shall be due 14 days after filing of the answering brief.
- (c) In any proceeding described in subparagraph (3), if a respondent files a petition but then fails to file a brief within the time allowed, the Bar must either:
- (i) File a brief within the time allowed for filing an answering brief. The brief shall comply with the rules governing petitions and opening briefs. At the time the brief is filed, the Bar must indicate whether it wishes to waive oral argument and submit the case on the record. Or:
 - (ii) Submit a letter stating that it wishes the matter submitted to the court on the record without briefing or oral argument. Notwithstanding waiver of briefing and oral argument under this paragraph, at the direction of the Supreme Court, the Bar shall file a petition and brief within the time directed by the court.
- (d) If a proceeding described in subparagraphs (3) or (4) is argued orally, the party who files the opening brief shall argue first.

See ORS 9.536, and Oregon State Bar Rules of Procedure, which are found on the Oregon State Bar's website, <<https://www.osbar.org>>, and in Thomson/West's Oregon Rules of Court.

ORAP COMMITTEE 2020

PROPOSAL NO.: 21

PROPOSER: Lisa Norris-Lampe, Appellate Legal Counsel

AMENDING RULE(S): ORAP 12.20(7) -- Delete Subsection Regarding When Court Will Set Oral Argument Date

DATE SUBMITTED: January 24, 2019

EXPLANATION:

[Taken from Lisa Norris-Lampe's email:]

The certified question rule, ORAP 12.20, says in (7) that the case will be set for oral argument as soon as practicable after the parties' briefs are filed. The subparagraph should be eliminated. (1) The Supreme Court is trying to set argument earlier than once all the briefs are in; (2) subparagraph (3) already tells the parties that there may be argument, so there is no need for a separate section telling them when argument will be set; and (3) the rule creates an unnecessary restriction on the process of setting argument.

RULE AS AMENDED:

Rule 12.20
CERTIFICATION OF QUESTION OF LAW TO
SUPREME COURT BY FEDERAL COURTS
AND OTHER STATE COURTS

The procedure for certifying a question of law to the Supreme Court under ORS 28.200 through 28.255 shall be as follows:

- (1) (a) The certification order shall set forth the question of law sought to be answered and a statement of facts relevant to the question, including the nature of the controversy in which the question arose. The statement of facts may be a brief, memorandum, or other material from the file of the certifying court if it contains the relevant facts and shows the nature of the controversy.

Proposal # 21 -- ORAP 12.20(7) -- Delete Subsection Regarding When Court Will Set Oral Argument Date

(b) The certification order shall be signed by the presiding judge and forwarded to the Supreme Court by the certifying court's clerk of court or court administrator accompanied by a copy of the court's register of the case. If the certifying court's register does not show the names and addresses of the parties or their attorneys, the court clerk or administrator shall separately provide that information.

(2) The filing and first appearance fees in the Supreme Court shall be equally divided between the parties unless otherwise ordered by the certifying court in its order of certification. The fees shall be collected when the parties file their stipulated or separate designations of record, as provided in subsection (5) of this rule.

(3) The Supreme Court will consider whether to accept a question certified to it without oral or written argument from the parties unless otherwise directed by the Supreme Court.

(4) The Administrator shall send a copy of the court's order accepting or declining to accept a certified question of law to the certifying court and to the parties.

(5) (a) If the court accepts certification of a question of law, the parties to the certified question shall attempt to agree on a designation of the part of the record of the certifying court necessary to a determination of the question. If the parties are unable to agree on a designation of record, each party may file a separate designation of record.

(b) A stipulated designation of record or the parties' separate designations of record shall be filed within 14 days after the date of the court's order accepting certification.

(c) On receipt of a stipulated designation or separate designations of record, the Administrator shall request from the certifying court's clerk of court or court administrator the part or parts of the record as designated, and any parts of the record that the Supreme Court determines may be necessary in answering the certified question(s). The Administrator shall serve a copy of the request on the parties.

(6) (a) Unless otherwise ordered by the Supreme Court, the certified question of law shall be briefed by the parties. The proponent of the question certified to the court shall file the opening brief and any other party may file an answering brief. If the nature of the question is such that no party is the proponent of the question, the plaintiff or appellant shall file the opening brief and the defendant, respondent, or appellee shall file the answering brief.

(b) The opening brief shall be served and filed within 28 days after the date the Administrator requests the record from the certifying court. The answering brief shall

be served and filed within 28 days after the date the opening brief is served and filed. The reply brief, if any, is due within 14 days of the date the answering brief is served and filed.

(c) As nearly as practicable, briefs shall be prepared as provided in ORAP 5.05 through 5.52, except that, in lieu of assignments of error, the brief shall address each certified question accepted by the court.

(7) ~~The case will be set for oral argument as soon as practicable after the parties' briefs are filed.~~

~~(8)~~ The court shall issue a written decision stating the law governing the question certified. Unless specifically ordered by the Supreme Court, costs will not be allowed to either party. The Administrator shall send to the parties copies of the court's decision at the time the decision is issued.

~~(89)~~ Petitions for reconsideration of the court's decision shall be subject to ORAP 9.25. After expiration of the period for filing a petition for reconsideration or after disposition of all petitions for reconsideration, the Administrator shall send a copy of the decision under seal of the Supreme Court to the certifying court and shall send copies thereof to the parties. Issuance of a sealed copy of the court's decision to the certifying court terminates the Supreme Court case.

ORAP COMMITTEE 2020

PROPOSAL NO.: 22

PROPOSER: Lisa Norris-Lampe, Appellate Legal Counsel

AMENDING: ORAP 16.03 and 16.10 -- eFiling, Applicability and eFilers

DATE: December 19, 2019 (edited Jan 27, 2020)

EXPLANATION:

ORAP Chapter 16 governs appellate eFiling and eService. Currently, ORAP 16.03 (Applicability) and ORAP 16.10(1) (eFilers) state that only OSB members who are “authorized to practice law” in Oregon can eFile. This proposal would expand the authority to eFile to all OSB Members.

Summary of Issue and Proposed Changes:

This rule proposal was prompted by at least two cases involving inactive or suspended attorneys who were representing themselves in Bar discipline matters.

Previously, our eFiling system did not permit a nonactive member to register for eFiling; after an upgrade installed this fall, however, the system now permits such registration. As a result, nonactive members now, from a technical perspective, can register and eFile (or, relatedly, continue to use eFiling following a transition to inactive, suspended, or other "nonactive" status).

In light of that technical change, The Appellate eCourt Change Management Committee membership recommends that both ORAP 16.03 and ORAP 16.10(1) be amended to permit any OSB member to eFile, regardless of registration status. The benefits of those amendments include:

- Eliminates the need for having Records staff manually check the status of lawyer-Filers, to ensure compliance with the current form of the rule.
- Permits suspended or inactive lawyers in active Supreme Court cases to eFile into those cases.

To the extent that any concern arises about suspended lawyers improperly using the system, we think that the risk of such use is exceptionally small and that, even if

something like that were to occur, an opposing party would alert the court and appropriate steps would be taken.

TECHNICAL

RULES AS AMENDED:

Edited version (new text in **{braces/boldface/underscore}**; omitted text in *[brackets/italics]*):

Rule 16.03

APPLICABILITY

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

Rule 16.10

eFILERS

- (1) Authorized eFilers
 - (a) Any member of the Oregon State Bar *[who is authorized to practice law]* may register to become an eFiler.

* * * * *

Clean Version:

Rule 16.03

APPLICABILITY

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

Rule 16.10

eFILERS

(1) Authorized eFilers

- (a) Any member of the Oregon State Bar may register to become an eFiler.

* * * * *

ORAP COMMITTEE 2020

PROPOSAL NO.: 23
PROPOSER: Lisa Norris-Lampe
AMENDING: ORAP 16.30 -- Conventional Filing Requirements
DATE: December 19, 2019

EXPLANATION:

ORAP Chapter 16 governs appellate eFiling and eService; ORAP 16.30 provides a list of documents that must be conventionally eFiled, rather than eFiled, for various reasons. This proposal would eliminate the current requirement to conventionally file a trial panel opinion from the Disciplinary Board, set out in ORAP 16.30(1)(c).

Summary of Issue and Proposed Changes:

The Oregon State Bar Rules (BRs) previously provided that, whenever a trial panel in a disciplinary proceeding issued an opinion, that opinion was to be filed with the Administrator, even before it was known whether either the lawyer or the Bar would seek Supreme Court review of the trial panel's decision. As a result, the court needed the trial panel opinions to be filed conventionally, because an actual case would ultimately be created only if a party requested review.

The BRs now have been amended to provide that a request for review -- not the trial panel opinion -- is the initial document to be filed with the Administrator. The record of proceedings before the trial panel -- which includes the trial panel opinion -- then follows in due course (filed in compliance with rules that govern submission of a record from an agency or the Bar). As a result, the conventional filing rule for trial panel opinions set out in ORAP 16.30(1)(c) is no longer needed.

RULES AS AMENDED:

Edited version (new text in **{braces/boldface/underscore}**; omitted text in *[brackets/italics]*):

Rule 16.30

CONVENTIONAL FILING REQUIREMENTS

- (1) The following documents must be conventionally filed:
 - (a) A document filed under seal, including a motion requesting that a simultaneously filed document be filed under seal or a document with an attachment that is sealed by statute or court order.
 - (b) An oversized demonstrative exhibit or oversized part of an appendix or excerpt of record. * * *
 - [(c) An opinion of a trial panel of the Disciplinary Board filed with the State Court Administrator under Bar Rule of Procedure 10.1.]*

* * * * *

Clean version:

Rule 16.30

CONVENTIONAL FILING REQUIREMENTS

- (1) The following documents must be conventionally filed:
 - (a) A document filed under seal, including a motion requesting that a simultaneously filed document be filed under seal or a document with an attachment that is sealed by statute or court order.
 - (b) An oversized demonstrative exhibit or oversized part of an appendix or excerpt of record. * * *

ORAP COMMITTEE 2020

PROPOSAL NO.: 24
PROPOSER: Alice Burnham, Appellate Court Services Division
AMENDING RULE(S): ORAP Appendices 3.33-1 and 3.33-2 -- Correcting Citations and Removing Misleading Text from 3.33-1
DATE SUBMITTED: December 31, 2018

EXPLANATION:

Appendix 3.33-1 has two problems:

- (1) It incorrectly states that it is an "Illustration for ORAP 3.33(4)(b)"; because of rule renumbering, it should be for (4)(c).
- (2) The wording on the example implies that, when transcribers prepare a full transcript, they do not have to list dates, volume numbers, and page numbers.

Appendix 3.33-2 incorrectly states that it is an "Illustration for ORAP 3.33(4)(c)"; because of rule renumbering, it should be for (4)(d).

RULE AS AMENDED:

APPENDIX 3.33-1

Illustration for ORAP 3.33(4)(cb) and ORS 19.370

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

_____,)
Plaintiff-Appellant,)
(or Plaintiff-Respondent)) _____ County Circuit
) Court No. _____
)
v.)
_____,) CA A _____

Proposal # 24 -- ORAP Appendices 3.33-1 and 3.33-2 -- Correcting Citations and Removing Misleading Text from 3.33-1

Defendant-Respondent.)
(or Defendant-Appellant))

**CERTIFICATE OF PREPARATION
AND SERVICE OF TRANSCRIPT**

I certify that I prepared ÷

~~All of the transcript designated as part of the record for this appeal. [or]~~

~~These parts of the transcript designated as part of the record for this appeal: [List the dates of all proceedings transcribed, the volume number of the transcript(s), and the page numbers specific to each transcript.]~~

I certify that the original of this Certificate was filed with the Appellate Court Administrator and copies were served on the trial court administrator and transcript coordinator on [date] .

I certify that on [date] a copy of the transcript or part thereof prepared by me and a copy of this Certificate were served on:

[name and address of each person served]

[Date]

Court Reporter or Transcriber

APPENDIX 3.33-2

Illustration for ORAP 3.33(4)(de)

**IN THE COURT OF APPEALS OF THE
STATE OF OREGON**

_____,)
Plaintiff-Appellant,)
(or Plaintiff-Respondent)) _____ County
) Circuit Court No. _____
)
v.)
_____,) CA A _____
Defendant-Respondent.)

(or Defendant-Appellant))

CERTIFICATE OF FILING OF TRANSCRIPT

I certify that I prepared:

All of the transcript designated as part of the record for this appeal. [or]

These parts of the transcript designated as part of the record for this appeal:

_____.

The transcript is now settled.

I certify that on _____ [date] _____ the transcript or part thereof prepared by me was filed with the Appellate Court Administrator in electronic form in the form required by ORAP 3.35(2).

I certify that on [date] a copy of this Certificate was served on:

[name and address of each person served]

[Date]

Court Reporter or Transcriber

ORAP COMMITTEE 2020

PROPOSAL NO.: 30
PROPOSER: n/a
AMENDING RULE(S): ORAP 1.15 etc: Make Permanent Temporary Rule
Amendments Adopted by CJO 18-057 / CJO 18-05
DATE SUBMITTED: n/a

EXPLANATION:

By this Chief Justice Order / Chief Judge Order, the appellate courts adopted technical amendments to the ORAP to correct citation errors and incorrect cross-references. The amendments will expire on December 31, 2020, unless made permanent.

RULE AS AMENDED:

[See CJO 18-057 / CJO 18-05 below.]

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

In the Matter of the Adoption)
of Temporary Amendments to the) Chief Justice Order 18-057
Oregon Rules of Appellate Procedure) Chief Judge Order 18-05

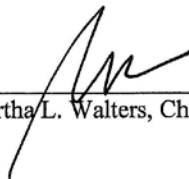
**ORDER ADOPTING TEMPORARY AMENDMENTS
TO OREGON RULES OF APPELLATE PROCEDURE**

Pursuant to ORAP 1.10(2), the Supreme Court and Court of Appeals may, from time to time, adopt temporary rules and temporary amendments to the Oregon Rules of Appellate Procedure. By this order, the courts adopt temporary amendments to the following rules: 1.15; 1.35; 1.40; 2.05; 2.15; 2.25; 2.40; 3.10; 3.15; 3.40; 3.50; 4.60; 4.64; 4.66; 4.68; 4.70; 4.72; 5.05; 5.45; 5.95; 7.10; 8.28; 8.52; 10.25; 10.35; 11.05; 11.20; 11.25; 11.30; 11.34; 11.35; 12.05; 12.07; 12.10; and 16.30.

Amended rules and appendices are shown on the attached pages. Marks in the left margin show lines that contain changes. Deleted material is shown in ~~double-strikeout~~ print; added material is shown in double-underline print.

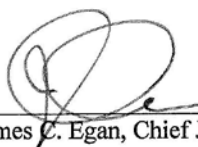
The amendments adopted by this order are effective January 1, 2019. They will expire on December 31, 2020, if not previously adopted as permanent amendments.

Dated this 15th day of November, 2018.



Martha L. Walters, Chief Justice

Dated this 14th day of November, 2018.



James C. Egan, Chief Judge

Rule 1.15
TERMINOLOGY

(1) Headings in these rules do not in any manner affect the scope, meaning, or intent of the rules.

(2) Singular and plural shall each include the other, where appropriate.

(3) In these rules, unless expressly qualified or the context or subject matter otherwise requires:

(a) "Administrator" means the Appellate Court Administrator or, as appropriate, the Appellate Court Administrator's designee.¹

(b) "Agreed narrative statement" means the parties' stipulated account of proceedings in lieu of a transcript or audio record.

(c) "Appeal" includes judicial review.

(d) "Appearing jointly" refers to two or more parties who together file single documents.

(e) "Appellant" means a party who files a notice of appeal or petition for judicial review.

(f) "Appellate court" means the Supreme Court, Court of Appeals, or both, as appropriate.

(g) "Appellate judgment" shall have the meaning set out in ORAP 14.05(1)(a).

(h) "Audio record" means the record of oral proceedings before a trial court or agency made by electronic means and stored or reproduced on audiotape or compact disc.

(i) "Business day" means Monday through Friday excluding legal holidays.

(j) "Cassette" means the cartridge containing the audio or video recording.

(k) "Conventional filing" means the filing of a paper document with an appellate court in accordance with these rules.

(l) "Cross-appellant" means a party, already a party to an appeal, who files an appeal against another party to the case.

(m) "Cross-respondent" means a party who is adverse to a cross-appellant.

- (n) "Decision" shall have the meaning set forth in ORAP 14.05(1)(b).
- (o) "Domestic relations case" includes but is not necessarily limited to these kinds of cases: dissolution of marriage, dissolution of domestic partnership, filiation, paternity, child support enforcement, child custody, modification of judgment of dissolution of marriage or domestic partnership, and adoption.
- (p) "Judgment" means any judgment document or order that is appealable under ORS 19.205, ORS chapter 138, or other provision of law.
- (q) "Legal advisor" means an attorney in a criminal case assisting a defendant who has waived counsel, as provided in ORS 138.504(2).
- (r) "Notice of appeal" includes a petition for judicial review and a notice of cross-appeal.
- (s) "Optical disk" means compact disk (CD), digital versatile disk (DVD), or comparable medium approved by the Administrator for use in filing an electronic version of a transcript.²
- (t) "Original" in reference to any thing to be served or filed shall mean the thing signed by the appropriate attorney or party and submitted for filing.
- (u) "Out-of-state attorney" means an attorney admitted to the practice of law in another jurisdiction, but not in Oregon, who appears by brief or argues the cause under ORAP 6.10(4) or ORAP 8.10(4).
- (v) "Petitioner" means a party who files a petition.
- (w) "Respondent" means the party adverse to an appellant or a petitioner.
- (x) "Transcript" means a typewritten, printed, or electronic transcription of oral proceedings before a trial court or agency.
- (y) "Trial court" means the court or agency from which an appeal or judicial review is taken.
- (z) "Video record" means the audio and visual record of proceedings before a trial court or agency made by electronic means and stored or reproduced on videotape or compact disc.

¹ See ORS 8.120 regarding duties of the State Court Administrator to act as court administrator for the Supreme Court and Court of Appeals, and authority of the State Court Administrator to delegate powers, by written designation, to officers and employees of the Oregon Judicial Department. Effective January 11, 2018, ~~May 1, 2008~~, the State Court Administrator delegated,

by written designation, to the current Appellate Court Administrator the duties to act as court administrator for the Supreme Court and Court of Appeals.

² The appellate courts anticipate that rules and procedures related to the electronic transmission of transcripts may change between publication dates of the Oregon Rules of Appellate Procedure. For current rules and procedures, consult Appellate eFiling.

Rule 1.35
FILING AND SERVICE

(1) Filing

(a) Filing Defined: Delivery, Receipt, and Acceptance

(i) A person intending to file a document in the appellate court must cause the document to be delivered to the Appellate Court Administrator.

(ii) Delivery may be made as follows and otherwise as provided under subsection (2) of this rule:

(A) Unless an exception applies under ORAP 16.30 or ORAP 16.60(2), an active member of the Oregon State Bar must deliver any document for filing using the appellate courts' eFiling system.¹

(B) Any other person must file any document in conventional form, by delivering the document to the Appellate Court Administrator, Appellate Court Records Section, 1163 State Street, Salem, Oregon 97301-2563.

(iii) The Administrator or the Administrator's designee must endorse upon any document delivered for filing the day and month, and the year the Administrator received the document.

(iv) Filing is complete when the Administrator has accepted the document. Except as otherwise provided by law or these rules, when the Administrator has accepted a document for filing, the filing date relates back to the date the Administrator received the document for filing.

(v) A correction to a previously filed document must be made by filing the entire corrected or amended document with the court. The caption of a corrected or amended document must prominently display the word "CORRECTED" or "AMENDED," as applicable.

(b) Manner of Filing

(i) As used in this rule, "case initiating document" means a document that initiates a new case in an appellate court, including but not necessarily limited to a notice of appeal; a petition for judicial review; a petition for writ of mandamus, habeas corpus, or mandamus; and any other petition invoking the original jurisdiction of the appellate court.

(ii) Using Appellate Courts' eFiling System

Delivery for filing using the eFiling system is subject to Chapter 16 of these rules.

(iii) Using United States Postal Service or Commercial Delivery Service

(A) A person may deliver a case initiating document for filing via the U.S. Postal Service, and delivery is complete on the date of mailing if mailed or dispatched for delivery in accordance with ORS 19.260(1)(a). If the Administrator receives the case initiating document within the time prescribed by law, the person need not submit proof of the date of mailing. If the Administrator does not receive the document within the time prescribed law and the person must rely on the date of mailing as the date of delivery, the person must file with the Administrator acceptable proof from the U.S. Postal Service of the date of mailing. Acceptable proof from the U.S. Postal Service of the date of mailing must be a receipt for certified or registered mail or other class of service for delivery within three calendar days, with the mail number on the envelope or on the item being mailed, and the date of mailing either stamped by the U.S. Postal Service on the receipt or shown by a U.S. Postal Service postage validated imprint on the envelope received by the Administrator or the U.S. Postal Service's online tracking system.

(B) A person may deliver a case initiating document for filing via commercial delivery service, and the delivery is complete on the date of dispatch for delivery by the delivery service if dispatched for delivery in accordance with ORS 19.260(1)(a). If the Administrator receives the case initiating document within the time prescribed by law, the person need not submit proof of the date of delivery for dispatch. If the Administrator does not receive the document within the time prescribed by law and if the person must rely on the date of delivery for dispatch, the person must file with the Administrator proof from the commercial delivery service of the date of delivery for dispatch, which may include the commercial delivery service's online tracking service.

(C) A person involuntarily confined in a state or local government facility may deliver a case initiating document for filing via

the U.S. Postal Service and the date of filing relates back to the date of delivery for mailing if the person complies with ORS 19.260(3). If the person relies on the date of delivery for mailing, the person must certify the date of delivery to the person or place designated by the facility for handling outgoing mail.

(D) Filing of any other document required to be filed within a prescribed time, including any brief, petition for attorney fees, statement of costs and disbursements, motion, or petition for review, is complete if mailed via the U.S. Postal Service or dispatched via commercial delivery service on or before the due date if the class of mail or delivery is calculated to result in the Administrator receiving the document within three calendar days.

(iv) Conventional Filing Not Using U.S. Postal Service or Commercial Delivery Service

If a person does not deliver a document for filing via the eFiling system, the U.S. Postal Service, or commercial delivery service as provided in this paragraph, then the document is not deemed filed until the document is actually received by the Administrator.

(v) Delivery by email is not permitted unless specifically authorized elsewhere in these rules.

(2) Service

(a) (i) Except as provided in clause (2)(a)(ii) of this subsection, a party filing a document with the court must serve a true copy of the document on each other party or attorney for a party to the case.²

(ii) A party filing a motion for waiver or deferral of court fees and costs under ORS 21.682 need not serve on any other party to the case a copy of the motion or any accompanying documentation of financial eligibility.³ After the court has ruled on the motion, if another party to the case requests a copy of the motion or documentation of financial eligibility for the purpose of challenging the court's ruling, the filing party must comply with the request but may redact protected personal information as described in ORAP 8.50(1). As used in this clause, "documentation of financial eligibility" means a document showing eligibility for a government benefit based on financial need or an affidavit or declaration showing the income, assets, and financial obligations of a party and the party's household.

(b) Except as otherwise provided by law,⁴ a party may serve a document on another person as provided in ORCP 9 or by commercial delivery service.

(i) If a party serves a copy of a document by the U.S. Postal Service or commercial delivery service, the class of service must be calculated to result in the person receiving the document within three calendar days.

(ii) Electronic service via the eFiling system is permitted only on attorneys who are authorized users of the eFiling system and as provided in ORAP 16.45. A person may not serve a case initiating document via the eFiling system, as set out in ORAP 16.45(3)(a).

(iii) Service by e-mail or facsimile communication is permitted only on an attorney as, and in the manner, provided by ORCP 9 G.

(c) Each service copy must include a certificate showing the date that the party delivered the document for filing.

(d) Any document filed with the Administrator must contain either an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service, and the names and addresses of the persons served, certified by the person who made service, except that:

(i) If a person was served by the appellate courts eFiling system, the certificate must state that service was accomplished at the person's email address as recorded on the date of service in the appellate eFiling system, and need not include the person's email address or mailing address.

(ii) If a person was served by email or by facsimile communication, the proof of service must state the email address or telephone number used to serve the person, as applicable, and need not include the person's mailing address.

(e) Service on Trial Court Administrators and Transcript Coordinators

(i) When a copy of a notice of appeal is required to be served on the trial court administrator, service is sufficient if it is mailed or delivered to the person serving in the capacity of trial court administrator for the county in which the judgment or appealable order is entered.

(ii) When a copy of a notice of appeal is required to be served on the transcript coordinator, service is sufficient if it is mailed or delivered to the office of the trial court administrator, addressed to "transcript coordinator."

(iii) An authorized user of the trial court electronic filing system may serve the trial court administrator and the transcript coordinator by using the "Courtesy Copies" e-mail function of that system, to send separate courtesy copies to the trial court administrator and to the transcript coordinator. The e-mail address for each judicial district's trial court administrator and transcript coordinator are available on the judicial district's website.

¹ At this time, only an active member of the Oregon State Bar may become an authorized user of the appellate courts' eFiling system. Therefore, self-represented litigants and attorneys who are not active members of the Oregon State Bar may not file a document with the appellate court using the eFiling System.

² Whenever these rules authorize or require service of a copy of any document on the Attorney General, the copy must be served at this address: Attorney General of the State of Oregon, Office of the Solicitor General, 400 Justice Building, 1162 Court Street, NE, Salem, Oregon 97301-4096.

³ See Chief Justice Order No. 07-056 (order adopted pursuant to ORS 21.682(4) prescribing standards and practices for waiver or deferral of court fees and costs).

⁴ See, e.g., ORS 183.482(2), relating to cases arising under the Administrative Procedures Act, and ~~ORS 197.850(4), relating to judicial review of Land Use Board of Appeals orders, each of which requires service of petitions for judicial review by registered or certified mail, and ORS 197.850(4), relating to judicial review of Land Use Board of Appeals orders, which requires service of petitions for judicial review by first class, registered, or certified mail.~~

Rule 1.40
VERIFICATION; DECLARATIONS; ADOPTING ORCP 17

(1) Except if specifically require by statute, no thing filed with the appellate court need be verified.

(2) When a statute requires a paper filed with the appellate court to be verified, a verification shall consist of a statement:

(a) that the person has read the paper and that the facts stated in the paper are true, to the best of the person's knowledge, information and belief formed after reasonable inquiry;

(b) signed and dated by the person; and

(c) sworn to or affirmed before a person authorized by law to administer oaths or affirmations, including, but not necessarily limited to, a notary public.

(3) A declaration under penalty of perjury may be used in lieu of any affidavit required or allowed by these rules. A declaration under penalty of perjury may be made without notice to adverse parties, must be signed by the declarant, and must include the substance of the following sentence in prominent letters immediately above the signature of the declarant: "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury." As used in these rules, "declaration" means a declaration under penalty of perjury.

(4) Oregon Rule of Civil Procedure (ORCP) 17 is hereby adopted as a rule of appellate procedure applicable to the Supreme Court and Court of Appeals.¹

¹ See ORAP 13.25 regarding the procedure for requesting sanctions under this subsection.

See generally ORS 138.090 regarding the signing of notices of appeal in criminal cases, ORS 19.250(1)(g)(~~e~~) regarding the signing of notices of appeal in civil cases, and ORAP 5.05(3)(c) ~~ORAP 5.05(4)(g)~~ regarding the signing of briefs.

Rule 2.05 CONTENTS OF NOTICE OF APPEAL

The notice of appeal shall be served and filed within the time allowed by ORS 19.255, ORS 138.071, or other applicable statute. Only the original need be filed. The notice of appeal shall be substantially in the form illustrated in Appendix 2.05 and shall contain:

- (1) The complete title of the case as it appeared in the trial court, naming all parties completely, including their designations in the trial court (*e.g.*, plaintiff, defendant, cross-plaintiff, intervenor), and designating the parties to the appeal, as appropriate (*e.g.*, appellant, respondent, cross-appellant, cross-respondent). The title also shall include the trial court case number or numbers.
- (2) The heading "Notice of Appeal" or "Notice of Cross-Appeal," as appropriate.
- (3) A statement that an appeal is taken from the judgment or some specified part of the judgment,¹ the name of the court and county from which the appeal is taken, and the name of the trial judge or judges who signed the judgment being appealed.
- (4) A designation of the adverse parties on appeal.
- (5) The litigant contact information required by ORAP 1.30.
- (6) A designation of those parts of the proceedings to be transcribed² and exhibits³ to be included in the record in addition to the trial court file. If the record includes an audio or video recording played in the trial court, the designation of record should identify the date of the hearing at which the recording was played and, if the appellant wants the transcript to include a transcript of the recording, a statement to that effect.
- (7) A plain and concise statement of the points on which the appellant intends to rely; but if the appellant has designated for inclusion in the record all of the testimony and all of the instructions given and requested, no statement of points is necessary.
- (8) If more than 30 days has elapsed after the date the judgment was entered, a statement as to why the appeal is nevertheless timely.

(9) If appellate jurisdiction is not free from doubt, citation to statute or case law to support jurisdiction.

(10) Proof of service, specifying the date of service.

(a) In a civil case, the notice of appeal shall contain proof of service on all other parties who appeared in the trial court.

(b) In any civil case in which the adverse party is a governmental unit and an attorney did not appear, either in writing or in person, on behalf of the governmental unit in the proceedings giving rise to the judgment or order being appealed (for instance, in the prosecution of a violation, a contempt proceeding, or a civil commitment proceeding);

(i) The notice of appeal shall contain proof of service on the attorney for the governmental unit (for instance, the city attorney as to a municipality, the district attorney as to a county or the state); and

(ii) If the governmental unit is the state or a county, the notice of appeal shall also contain proof of service on the Attorney General.⁴

(c) In a criminal case, the notice of appeal shall contain proof of service on:

(i) The defendant, in an appeal by the state. The notice of appeal in such an appeal also shall contain proof of service of a copy of the notice of appeal on the Office of Public Defense Services when the defendant was represented by court-appointed counsel.⁵

(ii) The district attorney, in an appeal by the defendant. The notice of appeal in such an appeal also shall contain proof of service of a copy of the notice of appeal on the Attorney General.⁶

(d) In a juvenile dependency case, including a case involving the termination of parental rights, the notice of appeal shall contain proof of service on the Office of Public Defense Services when a parent was represented by court-appointed counsel.⁷

(e) In all cases, in addition to the foregoing requirements, the notice of appeal shall contain proof of service on:

(i) The trial court administrator; and

(ii) The transcript coordinator, if any part of the record of oral proceedings in the trial court has been designated as part of the record on appeal.⁸

(11) A certificate of filing, specifying the date the notice of appeal was filed with the Administrator.

(12) A copy of the judgment, decree or order appealed from and of any other orders pertinent to appellate jurisdiction.

¹ See ORAP 2.10 regarding filing separate notices of appeal when there are multiple judgments entered in a case, including multiple judgments in consolidated cases.

² See ORAP 3.33 regarding the appellant's responsibility to make financial arrangements with either the court reporter or the transcript coordinator for preparation of a transcript of oral proceedings.

³ See ORAP 3.25 regarding making arrangements for transmitting exhibits to the appellate court for use on appeal. See also Uniform Trial Court Rule (UTCRC) 6.120(2) and (3) regarding retrieval of exhibits by trial court administrators for use on appeal.

⁴ Service of the notice of appeal on the Attorney General is for the purpose of facilitating the appeal and is not jurisdictional. See footnote 2 to ORAP 1.35 for the service address of the Attorney General.

⁵ Service of the notice of appeal on the Office of Public Defense Services is for the purpose of facilitating the appeal and is not jurisdictional. The service address of the Office of Public Defense Services is 1175 Court Street, NE, Salem, Oregon 97301-4030.

⁶ See footnote 5 to subparagraph (10)(b)(ii) of this rule.

⁷ See footnote 6 to subparagraph (10)(c)(i) of this rule.

⁸ See footnote 5 to subparagraph (10)(b)(ii) of this rule.

See ORS 19.240(3), and ORS 19.250, and ~~ORS 138.081~~; see also ORAP 8.20 regarding bankruptcy. In a criminal case, if a defendant appeals a judgment of conviction based only on a plea of guilty or no content, see ORS 138.085.

See Appendix 2.05 for a form of notice of appeal.

Rule 2.15 FILING FEES IN CIVIL CASES

(1) This rule:

(a) does not apply to appeals or petitions for judicial review in criminal, habeas corpus, post-conviction relief, juvenile court, civil commitment of persons with mental illness (as defined in ORS 426.005) or persons with an intellectual or developmental disability (as those terms are defined in ORS 427.005), Psychiatric

Security Review Board, and State Board of Parole cases;¹

(b) does apply to appeals and petitions for judicial review in all other civil proceedings.²

(2) One filing fee is required for each appellant appearing separately or for two or more appellants appearing jointly. When two or more notices of appeal are filed under ORAP 2.10(1), a filing fee is required for each notice of appeal. When a notice of appeal has been filed and a notice of appeal subsequently is filed in circumstances resulting in the creation of a new appellate court case,³ the appellant is required to pay a filing fee at the time of the subsequent notice of appeal.

(3) Except as provided in subsection (4) of this rule, a respondent's appearance fee is required for each respondent appearing separately or for two or more respondents appearing jointly. When a notice of appeal has been filed and a notice of appeal subsequently is filed in circumstances resulting in the creation of a new appellate court case, the respondent shall pay an appearance fee at the time of the appearance in the subsequent appeal.

(4) (a) If two or more respondents appearing jointly submit a single brief or other first appearance, only one appearance fee is required.

(b) If a respondent concurs in a brief but does not join in submitting it, no appearance fee is required from the concurring respondent but the concurring respondent is deemed to have waived appearance and oral argument.

(c) After a brief is filed, if a stipulation is filed allowing a second respondent to join in the brief, the second respondent is deemed to have appeared, and an appearance fee is required from that party.

(5) If a party fails to pay the appearance fee, the court will not consider anything filed by that party, and that party will not be allowed to argue the appeal.

¹ See ORS 21.010(2).

² See generally ORS 21.010(1), ~~ORS 21.480(3)~~. See ORS 21.010(3) regarding filing fees in an appeal from an appeal to a circuit court from a justice or municipal court involving a state violation or infraction or involving violation of a city charter or ordinance. See ORS 21.010(4) regarding filing fees in contempt cases.

³ For example, appeals taken from judgments entered under ORCP 67 B at significantly different times.

Rule 2.25
CASE TITLES;
CHANGES TO CASE TITLES

(1) With respect to appeals from courts:

(a) The case title shall include all parties or entities ever named in the case, including parties or entities dismissed from the case, notwithstanding that the title of the judgment being appealed may not refer to all parties in the case.

(b) All parties should be named completely and should be identified by their designations in the trial court (*e.g.*, plaintiff, defendant, cross-plaintiff, intervenor) and on appeal, as appropriate (*e.g.*, appellant, respondent, cross-appellant, cross-respondent). A party to the case who is not a party on appeal should be designated only by that party's designation in the trial court.

(c) Parties to a cross-claim, third-party claim or counterclaim should be set forth in a separate case title under the original case title.

(d) Where the trial court has used an "In Re" or other similar case title that does not identify the adverse parties to the proceeding, such as in probate and juvenile court cases, the contesting parties should be set forth in a separate case title under the original case title.

(e) The title shall include the trial court case number or numbers.¹

(2) The Administrator may correct the title of the case on appeal or judicial review to include all persons who were parties to the proceeding below and to designate properly the parties according to their status on appeal or judicial review. If the Administrator corrects the title, the Administrator shall give notice and opportunity to respond to all parties to the appeal or judicial review.

(3) (a) A person who was a party to the case in the tribunal from which the appeal was taken but who was not designated in the notice of appeal as a party to the appeal may appear as of right as a party to the appeal by filing a notice of intent to participate as a party.

(b) If the notice of appeal in a juvenile court, guardianship, conservatorship or other similar proceeding does not identify the juvenile or protected person as a party to the appeal, the juvenile or protected person may appear as of right as a party to the appeal by filing a notice of intent to participate as a party.

(c) A notice of intent to participate on appeal under paragraph (a) or (b) of this subsection shall be filed within 21 days after the date of filing of the notice of appeal, or within such further time as may be allowed by the court, and shall be served on all other parties to the appeal and on the court reporter or transcriber, if any, preparing the

transcript.

(d) A party who appears on appeal under paragraph (a) or (b) of this subsection may recover costs and attorney fees, if any, and is liable for costs and attorney fees, if any, the same as any party to an appeal.

(4) (a) In an adoption, juvenile court, or civil commitment case, when the notice of appeal is filed, the court will modify the case title on appeal for the purpose of avoiding public disclosure of the identity of natural persons who are parties to the case.² For the same purpose, in all other cases, on motion of a party or on its own motion, and for good cause shown, the court may modify the case title or the version of the court's opinion published on the Judicial Department's website.³

(b) In all cases, notwithstanding paragraph (a) of this subsection, the appellate judgment will contain the full case title.

¹ See ORAP 4.15(2) regarding case titles on judicial review of agency orders.

² See ORS ~~109.319 7-211~~ (adoption cases); ORS 419A.255 and ORS 419A.-256 (juvenile court cases, including termination of parental rights cases); ORS 426.160 and ORS 427.293 (civil commitment cases).

³ See Chief Justice Order 10-060 / Chief Judge Order 10-06 published on the Judicial Department's website at <http://www.publications.ojd.state.or.us/RULE177.pdf> for a nonexclusive list of factors that the court may consider in determining whether a party has shown good cause for modifying a case title or body of the court's opinion for the purpose of avoiding public disclosure of the identity of a party to the case. Regarding requests by persons in all cases, including adoption, juvenile court, and civil commitment, whose names may appear in published opinions but who are not parties to cases, see Chief Justice Order 10-060/ Chief Judge Order 10-06 published on the Judicial Department's website at <http://www.publications.ojd.state.or.us/RULE177.pdf>.

Appellate court opinions also are published in the softbound *Oregon Appellate Courts Advance Sheets* and thereafter in the hardbound *Oregon Reports*. The version of an opinion in those publications cannot be modified after publication. Appellate court opinions also are collected and published, in book form or electronically or both, by various persons and entities, including private legal research entities. The court has no control over whether those persons and entities will honor the court's post-publication modification of an opinion.

See Appendix 2.25.

Rule 2.40
**NOTICE OF APPEAL IN GUILTY OR NO CONTEST PLEA,
PROBATION OR SENTENCE SUSPENSION REVOCATION,
AND RESENTENCING CASES**

(1) Except as provided in subsections (2) and (3) of this rule, in addition to the notice of appeal requirements contained in ORAP 2.05, when a defendant in a criminal case appeals from a judgment following

- a guilty plea
- a no contest plea
- resentencing pursuant to a remand from an appellate court
- resentencing pursuant to the judgment of a court granting post-conviction relief

or from an order or judgment

- revoking probation or sentence suspension
- extending a period of probation
- imposing a new condition of probation
- modifying an existing condition of probation:

(a) The caption of the notice of appeal shall identify the notice as a "Notice of Appeal Pursuant to ORS 138.085~~ORAP 2.40~~."

(b) The body of the notice of appeal shall:

(i) Identify the type of proceeding from which the appeal arises (*e.g.*, guilty plea, no contest plea, probation revocation, etc.); and

(ii) Identify at least one colorable claim of error from the proceeding reviewable under ORS 138.105 or state that the defendant has reserved an issue for appeal under ORS 135.335.¹

(2) (a) Except as provided in paragraph (b) of this subsection, if, concurrently with filing a notice of appeal in a case subject to subsection (1) of this rule, the defendant has filed a motion for delayed appeal under ORS 138.071(5), the defendant may refer to ~~need not identify~~ a colorable claim of error identified in the notice of appeal.

(b) Where the defendant is unable timely to file a notice of appeal because of the need to identify a colorable claim of error in the case, the defendant requesting leave to file a delayed appeal under ORS 138.071(5) may do so by filing a combined notice of appeal and motion for late appeal. The document shall be entitled "Notice of Appeal; Motion -- File Late Appeal" and shall contain a statement, if true in the case, to the effect that the delay in filing the notice of appeal was attributable to the need to identify a colorable claim of error in the case. In the absence of opposition from the state filed within 14 days after filing of the combined notice of appeal and motion for delayed

appeal, the motion shall be deemed to have been granted by the court.

~~(3) If the defendant entered a conditional guilty or no contest plea under ORS 135.235(2), the defendant need not comply with paragraphs (1)(a) and (b) of this rule, but the caption of the notice of appeal shall identify the case as a "Conditional Plea Case."²~~

¹ See ORS 138.005(3) defining *State ex rel Dept. of Human Services v. Rardin*, 338 Or 299, 406-08, 110 P3d 580 (2005), for a description of "colorable claim of error." See Appendix 2.40 for illustrations of colorable claims of error.

² See ORAP 5.50(3)(b) regarding how a defendant must establish on appeal that the defendant's guilty or no contest plea was conditional.

See generally ORS 138.050, ORS 138.053(3), and ORS 138.222(7).

Rule 3.10
DUTIES OF TRIAL COURT ADMINISTRATOR
REGARDING JUDGMENTS AND ORDERS
ENTERED AFTER NOTICE OF APPEAL

(1) The trial court administrator shall promptly send to the Administrator and to each party to the appeal a copy of any order denying a motion to correct or add to the transcript and settling the transcript.¹ If the date of entry in the register is not apparent from the order, the trial court administrator shall state on the order the date of entry.

(2) In criminal and other cases in which the trial court appoints an attorney to represent a party or authorizes preparation of a transcript at state expense, the trial court administrator shall promptly send to the Administrator and provide to the transcript coordinator a copy of any order appointing an attorney on appeal or authorizing preparation of a transcript at state expense.

(3) In a criminal case, after a notice of appeal is filed, if the trial court, on motion of a party or on its own motion, enters a judgment or a modified, corrected or amended judgment, the trial court administrator promptly shall send a copy of the judgment to the Administrator, to the defendant or to the attorney for the defendant if the defendant is represented by counsel, to the district attorney, and to the Solicitor General of the Department of Justice.²

(4) If a case is transferred to another circuit court after a notice of appeal is filed, the trial court administrator in the originating circuit court shall promptly notify the Administrator of the date of the transfer and the circuit court to which the case has been transferred.

¹ See ORS 19.370(6)(b) and ORAP 3.40(5)(c) ORAP 3.40(4).

² See, for instance, a modified judgment to correct arithmetic or clerical errors or to delete or modify any erroneous term in the judgment under ORS 137.172; ~~ORS 138.083(1)~~; an amended judgment specifying the amount of restitution to be paid by the defendant under ORS 137.105; ~~ORS 138.083(2)~~; a modified sentence under ORS 137.712(1) or the temporary provisions of Oregon Laws 1997, chapter 852, sections 5 to 7a (printed following ORS 137.712); a modified judgment under ORS 137.754; and a judgment or new or amended judgment under ORS 19.270(4).

Rule 3.15
PREPARATION AND FILING OF
THE RECORD ON APPEAL

(1) The trial court administrator shall prepare and file the record in the same manner in all appeals.

(2) The trial court administrator shall identify separately by certificate and promptly forward on request of the appellate court:

(a) the trial court file, or part thereof designated by the parties if less than the entire file has been designated;

(b) the exhibits specified in the designation of record;

(c) if applicable, the audio or video record specified in the designation of record, or agreed narrative statement;¹ and

(d) any part of the trial court record ordered by the appellate court pursuant to ORAP 3.05(3).

(3) If the record of oral proceedings is an audio record and the appellate court has directed that the appeal proceed on the audio record without a transcript, the trial court administrator shall place the original audio record and the official log and reporter's certificate in an envelope or other suitable container, clearly identified as containing the audio record and official log, and forward the envelope or other container to the Administrator along with the trial court file.

¹ If the record of oral proceedings is a transcript, the transcript shall be transmitted to the appellate court as provided in ORAP 3.33.

See ORS 19.005, ORS 19.365, and ORS 138.015; ~~ORS 138.185(1)~~.

See ORAP 3.63 regarding the trial court record in proceedings recorded by videotape equipment.

Rule 3.40
ADDITION TO OR CORRECTION OF TRANSCRIPT

(1) A party desiring to correct or add to the transcript shall file a motion in the trial court within 15 days after either the date that the certificate of preparation of the transcript is filed with the Administrator or the date that any order holding the appeal in abeyance for the appellate settlement program expires.¹ The party must **serve** a copy of the motion on the Administrator and the transcript coordinator. When multiple parts of the oral record have been designated as part of the record on appeal or if more than one court reporter or transcriber is preparing the transcript, the transcript is not deemed filed until the last part of the transcript due on appeal is filed.

(2) The Administrator will hold the appeal in abeyance pending the trial court's disposition of the motion and the occurrence of one of the events specified in paragraphs (5)(b) or (c) of this rule.

(3) After the filing of a timely motion to correct or add to the transcript, the trial court shall have the authority to grant an extension of time for making the corrections or additions to the transcript.

(4) (a) If the trial court allows a motion to correct the transcript, after the filing of the corrected transcript, the appeal will remain in abeyance until the Administrator gives notice to the parties that the transcript has been settled as provided in paragraph (5)(b) of this rule.

(b) If the trial court allows a motion to add to the transcript, the appeal will remain in abeyance for a period of 15 days after the filing of the additional transcript. If a motion to correct the additional transcript is filed timely, the appeal will continue in abeyance pending disposition of the motion to correct and notice by the Administrator that the transcript has been settled as provided in paragraph (5)(b) of this rule.

(c) If the trial court denies the motion, the appeal will be reactivated as provided in paragraph (5)(c) of this rule.²

(5) (a) If no motion to correct or add to the transcript is filed, the transcript shall be deemed settled 15 days after the certificate of preparation of the transcript is served,³ and the period for filing the appellant's opening brief shall begin the next day.

(b) If a motion to correct or add to the transcript is filed and-granted, the period for filing the appellant's opening brief shall begin the day after the Administrator gives notice that the transcript has been settled.

(c) If a motion to correct or add to the transcript is filed and denied, the period for filing the appellant's opening brief shall begin the day after entry by the trial court administrator of the order settling the transcript.

¹ Under ORS 19.395, the appellate court, not the trial court, has the authority to extend the time in which to file a motion to correct or add to the transcript.

² See ORAP 8.40 regarding appellate court review of a trial court ruling affecting appeal, including an order disposing of a motion to correct or add to the transcript.

³ Under ORS 19.395 and ORAP 3.30(1), the appellate court, not the trial court, has the authority to grant any extension of time for the filing of transcripts or other parts of the record.

See generally ORS 19.370(5) to (7). *See also* ~~ORS 19.370(6)(b) and~~ ORAP 3.10(1) regarding the trial court administrator's duty to send to the Administrator a copy of the order denying a motion to correct or add to the transcript and settling the transcript.

Rule 3.50 RETURN OF RECORDS AND EXHIBITS

(1) When the appellate judgment issues, the Administrator shall return the trial court or agency record, file, and exhibits to the trial court or agency, except the Administrator may retain the transcript on appeal from a trial court.

(2) Jurisdiction over exhibits not forwarded to the appellate court and, after issuance of the appellate judgment, over those returned to the trial court or agency by the appellate court rests exclusively with the trial court or agency.

See ORS 19.365(6); *see also* ORAP 3.55.

Rule 4.60 LAND USE CASES IN GENERAL

(1) As used in ORAP 4.60 to 4.74:

(a) "Agency" means the Land Use of Board of Appeals (LUBA), the Land Conservation and Development Commission (LCDC), the Columbia River Gorge Commission (CRGC), or a referee appointed by a local government under ORS 197.375(2) to decide an appeal of an expedited land division matter under ORS 197.360 and ORS 197.365 or an appeal of an expedited industrial land use matter under ORS 197.722 to ORS 197.728, the Economic Recovery Review Council (ERRC), as appropriate.¹

(b) "Land use case" means a final order of LUBA, an order of the LCDC concerning designation of urban reserves under ORS 195.145(1)(b) or rural reserves under ORS 195.141, final action or order of the CRGC that is subject to expedited judicial review as provided in ORS 196.115(2)(a), ~~as appropriate,~~ or decision of a referee

under ORS 197.375(2), as appropriate, final order of the ERRC.⁴²

(2) Insofar as practicable, and except where some other procedure is provided by statute or these rules, the procedure for judicial review of a decision in a land case shall be the same as for judicial review of administrative proceedings, including that the form, content, and service of the petition shall be as prescribed in ORAP 4.15.

(3) The case caption of any petition, motion, brief, or other paper filed with the court shall include the words "EXPEDITED PROCEEDING UNDER ORS ____" and identifying the statute authorizing the expedited judicial review.⁴³

(4) In a LUBA or ~~referee ERRC~~ case, the petitioner shall establish in the petition for judicial review, by reference to the record of the local proceeding before LUBA or the ~~referee ERRC~~ or by petitioner's affidavit accompanying the petition, that the petitioner has statutory standing to invoke the jurisdiction of the court.⁴⁴

¹ ORS 197.726(2), as applicable, provides that an appeal of an application for an expedited industrial land use permit "may be made in the manner set forth in ORS 197.375."

² Judicial review of CRGC approval of county land use ordinances pursuant to section seven of the Columbia River Gorge National Scenic Area Act, PL 99-663, is not expedited. ORS 196.115(5).

³ E.g., ORS 197.850, ORS 197.855 (judicial review of LUBA decisions); ORS 197.651 (judicial review of LCDC orders concerning designation of urban reserves under ORS 195.145(1)(b) or rural reserves under ORS 195.141); ORS 196.115(2)-(4) (judicial review of certain CRGC final actions or orders); ORS 197.375(8) (judicial review of referee decisions concerning expedited land divisions); and ORS 197.726(3) (judicial review of referee decisions concerning expedited industrial land use permits). Or Laws 2011, ch 564, § 2, *compiled as a note after ORS 197.728 (judicial review of ERRC final orders).*

⁴ See ORS 197.850, ORS 197.375(8) and ORS 197.726(3) provide that judicial review of referee decisions under those statutes may be taken "in the manner provided for review of final orders of the Land Use Board of Appeals under ORS 197.850 and 197.855."

Rule 4.64 RECORD ON JUDICIAL REVIEW

(1) The agency shall transmit to the Court of Appeals the record, or the agreed part thereof if the parties have stipulated to shorten the record, as provided in paragraphs (a), (b), or (c) of this subsection, as appropriate. The record shall be accompanied by proof of service of copies of the record, except exhibits, on all other parties of record in the proceeding and on any other person required by law to be served.

(a) LUBA or the ~~referee ERRC~~ shall transmit the record in the manner and within the seven days allowed by ORS 197.850(5).

(b) The LCDC shall transmit the record in the manner and within the 21 days allowed by ORS 197.651(6).

(c) The CRGC shall transmit the record in the manner and within the 21 days allowed by ORS 196.115(3)(b)(A).

(2) The record shall be transmitted in a suitable cover or folder bearing on the outside the title and agency number of the case and clearly identifying it as a LUBA, LCDC, CRGC, ~~or ERRC expedited land division, or expedited industrial land use case~~, as appropriate. Whenever feasible, the original record shall be transmitted. The record shall be prepared in the manner required by ORAP 3.20.

(3) After the court has issued the appellate judgment, the record will be returned to the agency, unless the court otherwise directs.

**Rule 4.66
TIME FOR FILING BRIEFS**

(1) On judicial review of a LUBA decision, an LCDC decision, or ~~an ERRC~~ a referee decision:

(a) Notwithstanding ORAP 5.80, the petitioner's opening brief and excerpt of record shall be served and filed not later than 21 days after the filing of the petition for judicial review. Failure to file the opening brief within the time allowed by this rule will result in automatic dismissal of the petition.

(b) The respondent's answering brief shall be served and filed within 21 days after the filing of petitioner's opening brief. If the respondent fails to file a brief within the time allowed by this rule, the cause will be submitted on petitioner's opening brief and oral argument, and the respondent will not be allowed to argue the case.

(c) No reply brief shall be permitted.

(2) On judicial review of a CRGC decision, briefing shall be completed according to the deadlines set out in ORAP 5.80.

**Rule 4.68
CROSS-PETITIONS**

(1) On judicial review of a LUBA decision, an LCDC decision, or ~~an ERRC~~ a referee decision:

(a) A cross-petition for judicial review, if any, shall be served and filed within

seven days after the filing of the petition for judicial review.

(b) A cross-petitioner's opening brief and excerpt of record shall be served and filed within 14 days after the filing of petitioner's opening brief and may, if appropriate, be combined with the respondent's answering brief. If combined with the respondent's answering brief, a cross-petitioner's opening brief shall be served and filed within 21 days after the filing of the petitioner's opening brief.

(c) A cross-respondent's answering brief shall be due seven days after the filing of the cross-petitioner's opening brief. Notwithstanding ORAP 1.35(1)(d) and (2)(b), a cross-respondent shall file and serve the cross-respondent's answering brief in such a manner as to cause actual receipt of the brief by the Administrator and by all other parties to the judicial review no later than one business day after the brief is due. If the cross-respondent fails to file an answering brief on cross-petition within the time allowed by this rule, the cross-petition will be submitted on cross-petitioner's brief and oral argument, and cross-respondent will not be allowed to argue issues raised by the cross-petition.

(d) No reply brief on cross-petition shall be permitted.

(2) On judicial review of a CRGC decision, the procedure for cross-petitions shall be the same as for judicial review of administrative proceedings, and briefing on cross-petitions shall be completed according to the deadlines set out in ORAP 5.80.

**Rule 4.70
NO CONTINUANCES**

(1) On judicial review of a LUBA decision, an LCDC decision, or ~~an ERRC~~ a referee decision, in the Court of Appeals, no continuance or extension shall be granted as to the time specified by statute for transmission of the record, the time specified by these rules for filing the cross-petition and the briefs, or the time set for oral argument, except as prescribed in ORS 197.850(7) and ORS 197.860 in a LUBA case or ~~an ERRC~~ a referee case, or in ORS 197.651(8) in an LCDC case.

(2) On judicial review of a CRGC decision, in the Court of Appeals, no continuance or extension shall be granted as to the time specified by statute for the transmission of the record.

**Rule 4.72
MOTION NOT TOLLING TIME**

(1) On judicial review of a LUBA decision, an LCDC decision, or ~~an ERRC~~ a referee decision, a motion made before oral argument will not toll the time for transmission of the record, filing of briefs, or hearing argument.

(2) On judicial review of a CRGC decision, a motion made before oral argument will not toll the time for transmission of the record.

Rule 5.05
SPECIFICATIONS FOR BRIEFS

(1) (a) Except as provided in paragraph (1)(c) of this subsection, an opening, answering, combined, or reply brief must comply with the word-count limitation in paragraph (1)(b) of this subsection.¹ Headings, footnotes, and quoted material count toward the word-count limitation. The front cover, index of contents and appendices, index of authorities referred to, excerpt of record, appendices, certificate of service, any other certificates, and the signature block do not count toward the word-count limitation.

(b) (i) In the Supreme Court:

(A) An opening brief may not exceed 14,000 words.

(B) An answering brief may not exceed 14,000 words.

(C) A combined respondent's answering brief and cross-petitioner's opening brief may not exceed 22,000 words, with the answering brief part of the combined brief limited to 14,000 words.

(D) A combined cross-respondent's answering brief and petitioner's reply brief may not exceed 12,000 words, with the reply brief part of the combined brief limited to 4,000 words.

(E) A reply brief may not exceed 4,000 words.

(ii) In the Court of Appeals:

(A) An opening brief may not exceed 10,000 words.

(B) An answering brief may not exceed 10,000 words.

(C) A combined respondent's answering brief and cross-appellant's opening brief may not exceed 16,700 words, with the answering brief part of the combined brief limited to 10,000 words.

(D) A combined cross-respondent's answering brief and appellant's reply brief may not exceed 10,000 words, with the reply brief part of the combined brief limited to 3,300 words.

(E) A reply brief may not exceed 3,300 words.

(c) If a party does not have access to a word-processing system that provides a word count, in the Supreme Court, an opening, answering, or combined brief is acceptable if it does not exceed 50 pages, and a reply brief is acceptable if it does not exceed 15 pages; in the Court of Appeals, an opening, answering, or combined brief is acceptable if it does not exceed 35 pages, and a reply brief or reply part of a combined reply and cross-answering brief is acceptable if it does not exceed 10 pages.

(d) Except as to a supplemental brief filed by a self-represented party, an attorney or self-represented party must include at the end of each brief a certificate in the form illustrated in Appendix 5.05-2 that:

(i) The brief complies with the word-count limitation in paragraph (1)(b) of this subsection by indicating the number of words in the brief. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the brief. If the attorney, or a self-represented party, does not have access to a word-processing system that provides a word count, the certificate must indicate that the attorney, or self-represented party, does not have access to such a system and that the brief complies with paragraph (1)(c) of this subsection.

(ii) If proportionally spaced type is used, the size is not smaller than 14 point for both the text of the brief and footnotes.

(e) A party's appendix may not exceed 25 pages.

(f) Unless the court orders otherwise, no supplemental brief may exceed five pages.

(2) (a) On motion of a party stating a specific reason for exceeding the prescribed limit, the court may permit the filing of a brief or an appendix exceeding the limits prescribed in subsection (1) of this rule or prescribed by order of the court. A party filing a motion under this subsection must make every reasonable effort to file the motion not less than seven days before the brief is due. The court may deny an untimely motion under this paragraph on the ground that the party failed to make a reasonable effort to file the motion timely.

(b) If the court grants permission for a longer appendix, if filed in paper form, the appendix must be printed on both sides of each page and may be bound separately from the brief.³

(3) As used in this subsection, "brief" includes a petition for review or reconsideration, or a response to a petition for review or reconsideration. All briefs must conform to these requirements:

(a) Briefs must be prepared such that, if printed:

- (i) All pages would be a uniform size of 8-1/2 x 11 inches.
 - (ii) Printed or used area on a page would not exceed 6-1/4 x 9-12 inches, exclusive of page numbers, with inside margins of 1-1/4 inches, outside margins of 1 inch, and top and bottom margins of 3/4 inches.
- (b) Legibility and Readability Requirements
- (i) Briefs must be legible and capable of being read without difficulty. The print must be black, except for hyperlinks.
 - (ii) Briefs must be prepared using proportionally spaced type. The style must be Arial, Times New Roman, or Century Schoolbook. The size may not be smaller than 14 point for both the text of the brief and footnotes. Reducing or condensing the typeface in a manner that would increase the number of words in a brief is not permitted.
 - (iii) Briefs may not be prepared entirely or substantially in uppercase.
 - (iv) Briefs must be double-spaced, with a double-space above and below each paragraph of quotation.
- (c) Pages must be consecutively numbered at the top of the page within 3/8 inch from the top of the page. Pages of an excerpt of record included with a brief must be numbered independently of the body of the brief, and each page number must be preceded by "ER," *e.g.*, ER-1, ER-2, ER-3. Pages of appendices must be preceded by "App," *e.g.*, App-1, App-2, App-3.
- (d) The front cover must set forth the full title of the case, the appropriate party designations as the parties appeared below and as they appear on appeal, the case number assigned below, the case number assigned in the appellate court, designation of the party on whose behalf the brief is filed, the court from which the appeal is taken, the name of the judge thereof, and the litigant contact information required by ORAP 1.30. The lower right corner of the brief must state the month and year in which the brief was filed.⁴
- (e) The last page of the brief must contain the name and signature of the author of the brief, the name of the law firm or firms, if any, representing the party, and the name of the party or parties on whose behalf the brief is filed.
- (f) If filed in paper form:⁵
- (i) The paper must be white bond, regular finish without glaze, and at least 20-pound weight.
 - (ii) If both sides of the paper are used for text, the paper must be

sufficiently opaque to prevent the material on one side from showing through on the other.

(iii) The brief must be bound by binderclip and must not contain staples.

(4) The court on its own motion may strike any brief that does not comply with this rule.

¹ Briefs to which this restriction applies include, but are not limited to, a combined respondent's answering/cross-appellant's opening brief, a combined appellant's reply/cross-respondent's answering brief, and a brief that includes an answer to a cross-assignment of error.

² See ORAP 5.75 regarding setting out reply brief and cross-answering brief as separate parts of a combined reply and cross-answering brief.

³ See ORAP 5.50 regarding the excerpt of record generally.

⁴ See ORAP 5.95 regarding the title page of a brief containing confidential material.

⁵ See ~~ORS 7.250~~ ~~ORS 7.25~~ and ORAP 1.45(b) regarding use of recycled paper and printing on both sides of a page.

See Appendix 5.05-1.

Rule 5.45
ASSIGNMENTS OF ERROR AND ARGUMENT

(1) Assignments of error are required in all opening briefs of appellants and cross-appellants. No matter claimed as error will be considered on appeal unless the claim of error was preserved in the lower court and is assigned as error in the opening brief in accordance with this rule, provided that the appellate court may, in its discretion, consider a plain error.¹

(2) Each assignment of error must be separately stated under a numbered heading. The arrangement and form of assignments of error, together with reference to pages of the record, should conform to the illustrations in Appendix 5.45.

(3) Each assignment of error must identify precisely the legal, procedural, factual, or other ruling that is being challenged.

(4) (a) Each assignment of error must demonstrate that the question or issue presented by the assignment of error timely and properly was raised and preserved in the lower court. The court may decline to consider any assignment of error that requires the court to search the record to find the error or to determine if the error properly was raised

and preserved. Under the subheading "Preservation of Error":

(i) Each assignment of error, as appropriate, must specify the stage in the proceedings when the question or issue presented by the assignment of error was raised in the lower court, the method or manner of raising it, and the way in which it was resolved or passed on by the lower court.

(ii) Each assignment of error must set out pertinent quotations of the record where the question or issue was raised and the challenged ruling was made, together with reference to the pages of the transcript or other parts of the record quoted or to the excerpt of record if the material quoted is set out in the excerpt of record. When the parts of the record relied on under this clause are lengthy, they must be included in the excerpt of record instead of the body of the brief.

(iii) If an assignment of error challenges an evidentiary ruling, the assignment of error must quote or summarize the evidence that appellant believes was erroneously admitted or excluded. If an assignment of error challenges the exclusion of evidence, appellant also must identify in the record where the trial court excluded the evidence and where the offer of proof was made; if an assignment of error challenges the admission of evidence, appellant also must identify where in the record the evidence was admitted.

(b) Where a party has requested that the court review a claimed error as plain error, the party must identify the precise error, specify the state of the proceedings when the error was made, and set forth pertinent quotations of the record where the challenged error was made.

(5) Under the subheading "Standard of Review," each assignment of error must identify the applicable standard or standards of review, supported by citation to the statute, case law, or other legal authority for each standard of review.²

(6) Each assignment of error must be followed by the argument. If several assignments of error present essentially the same legal question, the argument in support of them may be combined so far as practicable.

(7) The court may decline to exercise its discretion to consider plain error absent a request explaining the reasons that the court should consider the error.³

¹For an error to be plain error, it must be an error of law, obvious and not reasonably in dispute, and apparent on the record without requiring the court to choose among competing inferences; in determining whether to exercise its discretion to consider an error that qualifies as a plain error, the court takes into account a non-exclusive list of factors, including the interests of the parties, the nature of the case, the gravity of the error, and the ends of justice in the particular case. *See State v. Vanornum*, 354 Or 614, 629-30, 317 P3d 889 (2013). *See also* ORS 138.257(2): "Subject to Article VII (Amended), section 3, Oregon Constitution, the appellate court shall not

reverse, modify or vacate a trial court judgment or order if there is little likelihood that any error affected the outcome."

² Standards of review include but are not limited to *de novo* review and substantial evidence for factual issues, errors of law and abuse of discretion for legal issues, and special statutory standards of review such as those found in the Administrative Procedures Act, ORS 183.400(4), and ORS 183.482(7) and (8). *See also* ORS 19.415(1), which provides that, generally, "upon an appeal in an action or proceeding, without regard to whether the action or proceeding was triable to the court or a jury," the court's review "shall be as provided in section 3, Article VII (Amended) of the Oregon Constitution"; ORS 19.415(3)(b) regarding discretion of the Court of Appeals to try the cause *de novo* or make one or more factual findings anew on appeal in some equitable proceedings; *see also* ORAP 5.40(8) concerning appellant's request for the court to exercise *de novo* review and providing a list of nonexclusive items Court of Appeals may consider in deciding whether to exercise its discretion.

³ *See State v. Tilden*, 252 Or App 581, 587-94, 288 P3d 567 (2012) (discussing cases in which Court of Appeals declined to review for plain error absent a request from the appellant).

Rule 5.95
BRIEFS CONTAINING CONFIDENTIAL MATERIAL

(1) Except as provided in subsection (6) of this rule, if a brief contains material that is, by statute or court order, confidential or exempt from disclosure,¹ the party submitting the brief shall file two original briefs:

(a) One brief shall contain the material that is confidential or exempt from disclosure. The title page of the brief shall contain in or under the case caption the words "CONFIDENTIAL BRIEF UNDER _____" followed by the statutory citation or a description of the court order under which confidentiality is claimed.* The original of the brief shall be placed in a sealed envelope marked "CONFIDENTIAL BRIEF."

(b) One brief shall have the material that is confidential or exempt from disclosure removed or marked out. The title page of the brief shall contain in or under the case caption the words "REDACTED BRIEF UNDER _____" followed by the statutory citation or a description of the court order under which confidentiality is claimed.*

(2) A party filing a brief under this rule shall serve two copies of the confidential brief and two copies of the redacted brief on each other party to the case on appeal or review.

(3) The Administrator shall keep both original briefs in the appellate file for the case. The Administrator shall make the redacted version of the brief available for public inspection and copying.

(4) (a) On motion of a person, the court shall make available for public inspection and copying a confidential brief based on a showing that the brief does not contain matter

that is confidential or exempt from disclosure.

(b) On motion of a person and under such conditions as the court may deem appropriate, the court may authorize inspection or copying of a confidential brief based on a showing that the person is entitled as a matter of law to inspect or copy the material that is confidential or exempt from disclosure.

(5) When the appellate judgment issues terminating a case, the Administrator shall distribute to brief storage facilities only the redacted copies of a brief filed under paragraph (1)(b) of this rule.

(6) Briefs in the following categories of cases are entirely confidential, and so are exempt from the requirements of subsections (1) to (5) of this rule: adoption, juvenile dependency (including termination of parental rights), juvenile delinquency, civil commitment of allegedly mentally ill persons and persons with an intellectual or developmental disability (as those terms are defined in ORS 427.005), and appeals from orders of the Psychiatric Security Review Board and State Hospital Review Panel. Parties filing in the Court of Appeals briefs in those categories of cases must comply with ORAP 5.10(1) and (3) regarding the original and number of copies to be served on other parties to the case.

¹ See, e.g., ORS 36.222(5) regarding confidential mediation communications and agreements; ORS 135.139, ORS 433.045(3), and ORS 433.055 regarding records revealing HIV testing information; ORS 137.077 regarding presentence investigation reports; ORS 179.495 and ORS 179.505 regarding medical records maintained by state institutions; ORS 412.094 regarding nonsupport investigation records; ORS 419B.035 regarding abuse investigation records; ORS 426.160 and ORS 426.370 regarding records in civil commitment cases; and ORS 430.399(6) ORS 430.399(5) regarding alcohol and drug abuse records. See generally ORAP 16.15(5)(b) for procedure for eFiling attachments that are confidential or otherwise exempt from disclosure.

* See Appendix 5.95.

**Rule 7.10
PREPARATION, FILING,
AND SERVICE OF MOTIONS**

(1) (a) For a motion other than a motion for extension of time, a title designating the party filing the motion and one of the motion titles listed in the "Motion Titles" section of Appendix 7.10-1.¹ For example, the motion of a respondent on appeal to dismiss the appeal for lack of jurisdiction should be titled "Respondent's Motion–Dismiss - Non-Appellant/Non-Petitioner" and the motion of the state for summary affirmance should be titled "Respondent's Motion–Summary Affirmance." If more than one motion is contained in a single document, the title of each motion shall be listed. If none of the motion titles listed in Appendix 7.10-1 fairly describes the motion, select the title option of "Motion–Other" and add a title that accurately describes the motion. "Motion–Other"

should be used only in circumstances in which the party has carefully reviewed the motion titles listed in Appendix 7.10-1 and does not find a title that describes the motion; or

(b) (i) For a motion for extension of time (MOET), a title designating the party filing the motion for extension of time and one of the MOET titles listed in the "Motions for Extension of Time (MOET)" section of Appendix 7.10-1. For example, the motion of an appellant for an extension of time to file the opening brief should be titled "Appellant's MOET-File Opening Brief." If more than one motion for extension of time is contained in a single document, or if a motion for extension of time is contained in a single document with another motion, the title of each MOET and/or motion shall be listed. If none of the MOET titles listed in Appendix 7.10-1 fairly describes the motion for extension of time, select the title option of "MOET-Other" and add a title that accurately describes the motion. "MOET-Other" should be used only in circumstances in which the party has carefully reviewed the MOET titles listed in Appendix 7.10-1 and does not find a title that describes the motion for extension of time; or

(ii) For a response to a motion or motion for extension of time (MOET), an indication that the filing is a response using the title of the motion or MOET to which the filing responds. For example, the response to a respondent's motion for summary affirmance should be titled "Response to Respondent's Motion-Summary Affirmance" and the response to an appellant's motion for extension of time to file the opening brief should be titled "Response to Appellant's MOET-File Opening Brief."

(2) A motion or response, excluding appendices or exhibits, longer than 20 pages shall contain an index of contents, an index of appendices or exhibits, and an index of authorities, each with page references.²

(3) Any party filing a motion to dismiss before the transcript has been filed shall serve a copy of the motion on the transcript coordinator and, if known to the party filing the motion to dismiss, all court reporters and transcribers who are responsible for preparing all or any part of the transcript on appeal.

(4) If a party files a motion for leave to file another document and submits the other document with the motion, then:

(a) if the court grants the motion, the date of filing for the other document relates back to the date of filing for the motion; or

(b) if the court denies the motion, the court will strike the other document.

(5) A motion or response that is confidential, filed under seal, or otherwise exempt from disclosure³ must include:

(a) in the caption, prominently displayed, the words "Confidential" or "Sealed," as applicable; and

(b) in the motion or response, a statement citing the authority by which the motion is deemed confidential, sealed, or otherwise exempt from disclosure.

(6) A motion or response that includes an attachment consisting of material that is confidential, sealed, or otherwise exempt from disclosure⁴ must comply with the requirements of ORAP 8.52.

¹ A party's use of the motion titles listed in Appendix 7.10-1 assists the appellate courts in characterizing a motion in their case management system and in displaying a case register that more clearly indicates the filing and resolution of the motion.

² See ORAP 5.35(3).

³ See, e.g., ORS 36.222(5) regarding confidential mediation communications and agreements; ORS 135.139, ORS 433.045(3), and ORS 433.055 regarding records revealing HIV testing information; ORS 137.077 regarding presentence investigation reports; ORS 179.495 and ORS 179.505 regarding medical records maintained by state institutions; ORS 412.094 regarding nonsupport investigation records; ORS 419B.035 regarding abuse investigation records; ORS 426.160 and ORS 426.370 regarding records in civil commitment cases; and ~~ORS 430.399(5)~~ ORS 430.399(6) regarding alcohol and drug abuse records. See generally ORAP 16.15(5)(b) for procedure for eFiling attachments that are confidential or otherwise exempt from disclosure.

⁴ See footnote 3 to subsection (5) of this rule.

See Appendix 7.10-2 for illustrations of motion title designations and Appendix 7.10-3 for illustrations of motions for extension of time title designations.

Rule 8.28
CORRECTED, SUPPLEMENTAL, OR NEW
JUDGMENTS IN CRIMINAL CASES AFTER
NOTICE OF APPEAL FILED

(1) After a notice of appeal is filed in a criminal case, if either the state or the defendant files a motion in the trial court for entry of a corrected or supplemental judgment, the party filing the motion shall transmit a copy of the motion to the appellate court.¹

(2) (a) If the trial court enters a corrected or supplemental judgment on motion of a party or on its own motion, a party wishing to appeal the corrected or supplemental judgment shall file an amended notice of appeal within the time and in the manner prescribed in ORS chapter 138 and shall use the appellate case number assigned to the appeal from the original judgment. The amended notice of appeal shall state when the

party received notice of entry of the corrected or supplemental judgment.

(b) If the trial court enters a corrected or supplemental judgment and the appellant no longer wishes to pursue the original appeal, the appellant shall file a motion to dismiss the appeal.

(c) If the trial court denies a motion for entry of a corrected or supplemental judgment subject to subsection (1) of this rule, the party who filed the motion shall notify the Administrator in writing and within seven days after the date of entry of the trial court's order and shall attach a copy of the order denying the motion.

(3) When a party has filed a motion subject to subsection (1) of this rule, pending a final ruling on the motion by the trial court, the appellate court, on motion of a party or on its own motion, may order that the appeal be held in abeyance. If an order is entered holding the appeal in abeyance, when the court receives notice under subsection (2) of this rule that the trial court has entered a corrected or supplemental judgment or a final order disposing of the motion, the appellate court shall reactivate the appeal or issue such other order as may be appropriate.

¹ See, e.g., a motion in the trial court under ORS 137.172 ~~ORS 138.083(1)~~ for entry of a corrected judgment to correct arithmetic or clerical errors or to delete or modify any erroneous term in the judgment; a motion in the trial court under ORS 137.105 ~~ORS 138.083(2)~~ for entry of a supplemental judgment specifying the amount of restitution to be paid by the defendant; and a motion for entry of a corrected judgment under ORS 137.754.

Rule 8.52
CONFIDENTIAL AND SEALED ATTACHMENTS

A document that includes an attachment containing material that is, by statute or court order, confidential, sealed, or otherwise exempt from disclosure¹ must include:

(1) in the caption, prominently displayed, the words "Includes Confidential Attachment" or "Includes Sealed Attachment," as applicable; and

(2) in the filing, a statement citing the authority by which the attachment is deemed confidential or sealed.

¹ See, e.g., ORS 36.222(5) regarding confidential mediation communications and agreements; ORS 135.139, ORS 433.045(3), and ORS 433.055 regarding records revealing HIV testing information; ORS 137.077 regarding presentence investigation reports; ORS 179.495 and ORS 179.505 regarding medical records maintained by state institutions; ORS 412.094 regarding nonsupport investigation records; ORS 419B.035 regarding abuse investigation records; ORS 426.160 and ORS 426.370 regarding records in civil commitment cases; and ORS 430.399(6) ~~ORS 430.399(5)~~ regarding alcohol and drug abuse records. See generally ORAP 16.15(5)(b) for

procedure for eFiling attachments that are confidential or otherwise exempt from disclosure.

Rule 10.25
EXPEDITED APPEAL OF CERTAIN PRETRIAL
ORDERS IN CRIMINAL CASES

(1) This rule applies to a pretrial appeal under ORS 138.045(1)(a) or (d) ~~ORS 138.060(1)(a) or (e)~~ when the defendant is charged with a felony and is in custody, and the trial court has dismissed or set aside the accusatory instrument or suppressed evidence.¹

(2) In all cases subject to this rule:

(a) The case caption of any brief, motion, petition, or other paper filed with the court shall include the words "EXPEDITED APPEAL UNDER ORS _____" and identifying the statute authorizing the expedited appeal.

(b) Appellant's opening brief shall be due 35 days after the transcript settles. Failure to file the opening brief within the prescribed time will result in automatic dismissal of the appeal.

(c) Respondent's answering brief shall be due 35 days after appellant's opening brief is served and filed. If respondent fails to file an answering brief within the prescribed time, the appeal will be submitted on appellant's opening brief and oral argument, and respondent will not be allowed to argue the case.

(d) Absent extraordinary circumstances, the court will not grant an extension of time or reschedule oral argument.

(e) A motion made before oral argument will not toll the time for transmitting the record, filing briefs, or hearing oral argument.

¹ See ORS 138.261.

Rule 10.35
FORM OF CERTAIN DECISIONS;
JOINT MOTIONS FOR RESOLUTION BY UNPUBLISHED ORDER

(1) On the motion of a party or on its own motion, a department of the Court of Appeals may decide by unpublished order or other summary disposition the merits of an appeal in a criminal action in which the only question or questions on appeal pertain to the sentence for a felony committed on or after November 1, 1989, if the department determines:

(a) The appeal does not present a substantial question of law;¹ and

(b) A published opinion would not provide significant guidance to judges, attorneys, or others who administer or implement the sentencing guidelines.³

(2) (a) Except as provided in subsection (1) of this rule, on joint motion of the parties to any appeal, a department of the Court of Appeals may decide the merits of an appeal by unpublished order if the department determines;

(i) The appeal does not present a substantial question of law;

(ii) All parties to the appeal agree both on the correct resolution of all questions raised on appeal and on the appropriate disposition of the appeal; and

(iii) A published opinion would not significantly benefit the bench, the bar, or the public.

(b) Parties seeking relief based on the assertion that the appeal does not present a substantial question of law must include a sufficient statement of facts of the case to show that all of the questions raised on appeal are grounded in those facts.

(c) Parties are discouraged from moving for relief under this subsection when resolution of the merits of the appeal would require the appellate court to try the cause anew upon the record or to make one or more factual findings anew upon the record. The Court of Appeals will exercise its discretion to grant relief under this subsection in such cases only in exceptional circumstances.²

¹ Cases discussing what does and does not constitute a "substantial question of law" include *Smith v. Board of Parole*, 343 Or 410, 416-17, 171 P3d 354 (2007); *Atkinson v. Board of Parole*, 341 Or 382, 387-90, 143 P3d 538 (2006); and *Rodriguez v. Board of Parole*, 187 Or App 282, 289-93, 67 P3d 970 (2003).

² ~~This subsection implements ORS 138.222(6).~~

³ ~~See also~~ ORS 138.227, ORS 138.665, and ORS 419A.209, pertaining, respectively, to criminal, post-conviction relief, and juvenile court cases, and authorizing the filing of a joint motion to vacate the trial court decision being appealed and to remand for reconsideration. Under ORS 2.570(6), ~~ORS 2.57(6)~~, such motions may be decided by order.

Rule 11.05
MANDAMUS:
INITIATING A MANDAMUS PROCEEDING

(1) A party seeking a writ of mandamus in the Supreme Court shall apply by filing a petition substantially in the form prescribed by this rule.

(2) Except as otherwise provided in this rule, a petition for writ of mandamus shall comply as to form with ORAP 5.05(4)(c) through (h). The petition shall also include, in addition to any matters required by law:

(a) A title page including a caption containing the title of the proceeding, a heading indicating the type of writ requested (*e.g.*, "petition for alternative writ of mandamus," "petition for peremptory writ of mandamus"), and, if the mandamus proceeding arises from a matter before a lower court or administrative agency, the identifying number, if any, assigned to the matter below.

(i) In a mandamus proceeding that challenges the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals, the case title of the proceeding shall be the same as the case title in the lower court, except that the party seeking relief shall be designated as the "relator" in addition to that party's designation in the trial court, and the adverse real party in interest shall be designated as the "adverse party" in addition to that party's designation in the trial court. The judge or court shall not be named as a defendant in the mandamus proceeding.¹

(ii) In any other mandamus proceeding,² the case title of the proceeding shall be "State ex rel _____, Plaintiff-Relator, v. _____, Defendant," which title shall appear on the petition and all other documents filed in the proceeding.³

(b) On the title page, the relator shall include the litigant contact information required by ORAP 1.30. If any party is not represented by an attorney, the title page shall include the party's name, mailing address, and telephone number.

(c) A statement in support of the petition, containing:

(i) A concise but complete statement of facts material to a determination of the question or questions presented and the relief sought;

(ii) A statement why the petition is timely.⁴

(iii) A statement why application was not made to the circuit court for relief; and

(iv) A statement why appeal or any other applicable potential remedy is not a plain, speedy and adequate remedy in the ordinary course of law, precluding issuance of the writ.⁵

(d) Proof of service as follows:

(i) In a mandamus proceeding that challenges the action of a judge in

a particular case in the circuit court, the Tax Court, or the Court of Appeals, the relator shall accompany the petition with proof of service on the adverse party, any other party (if any) to the proceeding in the lower court, and the judge or court whose action is challenged in the mandamus proceeding.

(ii) In any other mandamus proceeding, the relator shall accompany the petition with proof of service on the defendant and, if the mandamus proceeding arises from another proceeding or controversy, proof of service on any other party to the proceeding or controversy.

(iii) If the state, a state officer, or a state agency is a party to the case, proceeding, or controversy from which the mandamus proceeding arises, the relator shall include proof of service on the Attorney General.⁶

(e) If the relator seeks a stay in the proceedings from which the mandamus proceeding arises, the caption shall indicate "STAY REQUESTED," and the relator shall show, in the statement in support of the petition, that the relator requested a stay from the court, judge, or administrative agency or official whose order or decision is being challenged and that the request for a stay was denied, or that it would be futile to request a stay from the court, judge, or administrative agency or official. If the relator seeks to have the Supreme Court stay the proceedings from which the mandamus proceeding arises, the relator shall file a motion pursuant to chapter 7 of the Oregon Rules of Appellate Procedure.

(f) If the mandamus proceeding challenges a written order or decision, a copy of the order or decision shall be attached to the petition.

(3) The relator shall accompany the petition:

(a) With a memorandum of law with supporting arguments and citations. The form of the memorandum shall comply with ORAP 7.10(1) and (2).

(b) If the mandamus proceeding arises from a matter in which a record has been made, the relator must assemble an excerpt of record containing such parts of the record relating to the matter as is necessary for a determination of the question or questions presented and the relief sought. The excerpt of record must comply with ORAP 5.50(5).

(c) In a mandamus proceeding that challenges the action of the Court of Appeals, the Tax Court, or a judge in a particular case in the circuit court, the relator need not accompany the petition with a proposed form of writ of mandamus; in any other mandamus proceeding, the relator shall do so.

(4) (a) The caption of any memorandum, motion, or any other document filed in the mandamus proceeding, except the petition for a writ of mandamus, shall display prominently the words "MANDAMUS PROCEEDING."⁷

(b) If no record was made below, the petition, memorandum, and other supporting material may be submitted as a single document.

(c) If a record was made in the matter from which the mandamus proceeding has arisen, the relator shall assemble and submit the petition, the memorandum in support of the petition, and the excerpt of record as separate documents.

(d) The original petition and accompanying documents shall be filed with the Administrator.

(5) If the petition, memorandum, or an accompanying motion in a mandamus proceeding includes an attachment containing material that is, by statute or court order, confidential, sealed, or otherwise exempt from disclosure,⁸ the filing must comply with the requirements of ORAP 8.52.

¹ See Illustration 1a in Appendix 11.05.

² For example, mandamus proceedings that challenge the act or failure to act of a public official or administrative agency, or that challenge administrative action of a judge or other action of a court of an institutional nature.

³ See Illustrations 2 and 3 in Appendix 11.05.

⁴ See *State ex rel Redden v. Van Hoomissen*, 281 Or 647, 576 P2d 355 (1978), and *State ex rel Fidanque v. Paulus*, 297 Or 711, 688 P2d 1303 (1984), regarding timeliness. As a rule of thumb, the relator usually should file the petition within 30 days after the date of the action that the relator seeks to challenge in mandamus.

⁵ See ORS 34.110; *State ex rel Automotive Emporium v. Murchison*, 289 Or 265, 611 P2d 1169 (1980).

⁶ See footnote 2 to ORAP 1.35 for the service address of the Attorney General.

⁷ See Illustration 1b in Appendix 11.05.

⁸ See, e.g., ORS 36.222(5) regarding confidential mediation communications and agreements; ORS 135.139, ORS 433.045(3), and ORS 433.055 regarding records revealing HIV test information; ORS 137.077 regarding presentence investigation reports; ORS 179.495 and ORS 179.505 regarding medical records maintained by state institutions; ORS 412.094 regarding nonsupport investigation records; ORS 419B.035 regarding abuse investigation records; ORS 426.160 and ORS 426.370 regarding records in civil commitment cases; and ORS 430.399(6) ~~ORS 430.399(5)~~ regarding alcohol and drug abuse records. See generally ORAP 16.15(5)(b) for procedure for eFiling attachments that are confidential or otherwise exempt from disclosure.

See ORS 34.105 to ~~34.250~~ 34.240 regarding mandamus proceedings generally; ORS 34.120(2)

~~regarding the Supreme Court's original mandamus jurisdiction; and ORS 34.200 and 34.250 regarding procedure in certain Supreme Court mandamus proceedings; ORS 34.120(2) regarding the Supreme Court's original mandamus jurisdiction; and ORS 34.250 regarding procedure in Supreme Court mandamus proceedings.~~

See ORS 21.010(1), (5) regarding filing fees.

**Rule 11.20
HABEAS CORPUS AND
QUO WARRANTO PROCEEDINGS**

(1) With respect to a habeas corpus or quo warranto proceeding under Article VII (Amended), section 2, of the Oregon Constitution, the procedure for filing a petition (including a statement in the petition why application was not made to the circuit court), the defendant's appearance in opposition thereto, the court's consideration of the petition, and briefing and oral argument shall be the same insofar as practicable as for a writ of mandamus.

(2) A petition for a writ of habeas corpus shall be entitled "_____, Plaintiff, v. _____, Defendant." A petition for a writ of quo warranto shall be entitled "_____, Petitioner, v. _____, Respondent."

(3) If the petition for a writ of habeas corpus includes an attachment containing material that is, by statute or court order, confidential, sealed, or otherwise exempt from disclosure,¹ the petition must comply with the requirements of ORAP 8.52.

¹ See, e.g., ORS 36.222(5) regarding confidential mediation communications and agreements; ORS 135.139, ORS 433.045(3), and ORS 433.055 regarding records revealing HIV test information; ORS 137.077 regarding presentence investigation reports; ORS 179.495 and ORS 179.505 regarding medical records maintained by state institutions; ORS 412.094 regarding nonsupport investigation records; ORS 419B.035 regarding abuse investigation records; ORS 426.160 and ORS 426.370 regarding records in civil commitment cases; and ORS 430.399(6) ~~ORS 430.399(5)~~ regarding alcohol and drug abuse records. See generally ORAP 16.15(5)(b) for procedure for eFiling attachments that are confidential or otherwise exempt from disclosure.

See ORS 34.310 through 34.730 and Article VII (Amended), section 2, of the Oregon Constitution; see also ORS 30.510 through ORS 30.640 relating to actions for usurpation of an office or of a franchise.

**Rule 11.25
BAR ADMISSION, REINSTATEMENT,
AND DISCIPLINARY PROCEEDINGS**

(1) As used in this rule, the following are parties:

(a) The Oregon State Bar in a disciplinary, contested ~~reinstatement, or contested admission~~ admission or contested reinstatement proceeding.

(b) The ~~respondent accused~~ respondent in a disciplinary proceeding.

(c) The applicant in a contested ~~reinstatement~~ admission proceeding.

(d) The applicant in a contested ~~admission~~ reinstatement proceeding.

(2) Disciplinary and Contested Reinstatement Proceedings

~~(a) A petition concerning a disciplinary proceeding, a bar applicant's contested admission or a trial panel opinion in a former member's contested reinstatement shall be filed with the Administrator, together with an opening brief, with proof of service on all parties, within 30 28 days after written notice by to the Bar's Disciplinary Board Clerk Counsel and the parties of the court's receipt of the trial panel opinion record of the proceedings before the trial panel under Oregon State Bar Rule of Procedure (BR) 10.5(a) or the Board of Bar Examiners under Rule for Admission 9.60(1). An answering brief shall be due 28 days after filing of the opening brief. A reply brief, if any, shall be due 14 days after filing of the answering brief.~~

(b) The Bar's Disciplinary Counsel must file the record of the proceedings before the trial panel pursuant to BR 10.4. The preparation, transmission, and service of the record is subject to ORAP 4.20, except that subsections (8) and (9) do not apply. Upon receipt of the record, the Administrator must send written notice to the parties. A brief in any of the proceedings named in this rule shall conform to ORAP 5.05, ORAP 5.10, ORAP 5.35, and ORAP 9.17(5), except that no excerpt of record is required, and shall show proof of service on all parties to that proceeding. The Bar shall be served by service on the Bar's Disciplinary Counsel.

(c) An opening brief shall be due no later than 28 days after the Administrator's notice to the parties of receipt of the record. An answering brief shall be due 28 days after filing of the opening brief. A reply brief, if any, shall be due 14 days after filing of the answering brief.

~~(d)(3) If a respondent files a petition but then fails to file a brief within the time allowed, the Bar must either, notwithstanding BR 10.5(b), an accused who is required to file a petition and brief fails to do so within the time allowed under BR 10.5(a), the Bar shall~~

~~(i)(a) File a petition and brief within the time allowed for filing an answering brief. The brief shall comply with the rules governing petitions and opening briefs. At the time the petition and brief is are filed, the Bar must shall indicate whether it wishes to waive oral argument and submit the case on the record, or~~

(ii)(b) Submit a letter stating that it wishes the matter submitted to the court on the record without briefing or oral argument. Notwithstanding waiver of briefing and oral argument under this paragraph, at the direction of the Supreme Court, the Bar shall file a petition and brief within the time directed by the court.

(3) Contested Admission Proceedings

(a) The Bar must file the decision of the Board of Bar Examiners on reinstatement with the Administrator pursuant to RFA 9.55. The Bar also must file the record with the Administrator. The preparation, transmission, and service of the record is subject to ORAP 4.20, except that subsections (8) and (9) do not apply. Upon receipt of the record, the Administrator must send written notice to the parties.

(b) A petition concerning a bar applicant's contested admission under Rule for Admission 9.60(1) shall be filed with the Administrator, together with an opening brief, with proof of service on all parties, within 28 days after the Administrator's written notice to the parties of the court's receipt of the record of the proceedings before the Board.

(c) An answering brief shall be due 28 days after filing of the opening brief. A reply brief, if any, shall be due 14 days after filing of the answering brief.

(4) A brief in any of the proceedings described in this rule must conform to ORAP 5.05, ORAP 5.10, ORAP 5.35, and ORAP 9.17(5), except that no excerpt of record is required. The brief must show proof of service on all parties to the proceeding. The Bar shall be served by service on the Bar's Disciplinary Counsel.

(5)(4) If the case is argued orally, the party who files the opening brief shall argue first.

See ORS 9.536, and Oregon State Bar Rules of Procedure, which are found on the Oregon State Bar's website, <<http://osbar.org>>, and in Thomson/West's *Oregon Rules of Court*.

**Rule 11.30
BALLOT TITLE REVIEW**

The practice and procedure governing a petition to the Supreme Court to review a ballot title shall be:

(1) Any elector dissatisfied with a ballot title provided by the Attorney General under ORS 250.067 or ORS 250.075(2), or by the Legislative Assembly under ORS 250.075(1), may file with the Administrator a petition to review the ballot title.

(2) The petition must be filed within 10 business days after the day upon which the Attorney General certifies the ballot title to the Secretary of State, or the Legislative Assembly files the ballot title with the Secretary of State. If a petition is mailed to the Administrator in

compliance with ORAP 1.35(1), then the petition is deemed filed when mailed; otherwise, a petition is deemed filed when actually received by the Administrator.

(3) The form of the petition shall comply with ORAP 7.10 governing motions. The petition shall have a title page containing:

(a) A case title in which the party petitioning for review is designated as the petitioner and the Attorney General is designated as the respondent.

(b) The title "Petition to Review Ballot Title Certified by the Attorney General" or "Petition to Review Ballot Title Certified by the Legislative Assembly," as the case may be.

(c) The date the ballot title was certified.

(d) The chief petitioner referred to in ORS 250.045.

(e) The litigant contact information required by ORAP 1.30, ~~ORS 1.30~~.

(4) The body of the petition shall be no longer than 10 pages and:

(a) Shall state the petitioner's interest in the matter, whether the petitioner is an elector, and whether the petitioner timely submitted written comments on the draft ballot title.

(b) Shall include the reason the ballot title does not substantially comply with the requirements of ORS 250.035, and a request that the Supreme Court certify to the Secretary of State a ballot title that complies with the requirements of ORS 250.035 in lieu of the ballot title challenged by petitioner or refer the ballot title to the Attorney General for modification.

(c) May include under the heading "Arguments and Authorities" legal arguments and citation of legal authorities.

(5) (a) The petition shall have attached to it a copy of the ballot title as certified to or filed with the Secretary of State and containing the full text of the ballot title and a photocopy of the text of the measure as submitted to the Secretary of State.

(b) The petition shall show proof of service on the Attorney General,¹ as well as any chief petitioner who did not file the petition to review the ballot title and proof of written notification to the Secretary of State that the petition has been filed.

(c) The original petition shall be filed. The petition shall be accompanied by the filing fee required for an original proceeding in the Supreme Court.

(6) The Attorney General has seven business days after the filing of the petition,

unless a shorter time is ordered by the court, to:

(a) File the draft ballot title, the certified ballot title, the Attorney General's letter of transmittal to the Secretary of State and, if not overly lengthy, written comments received by the Secretary of State concerning the draft ballot title. In addition, the Attorney General may provide the court with the text of the certified ballot title, and any subsequent modified ballot title, by electronic mail.

(b) File an answering memorandum. If the Attorney General claims that text as contained in the petition is in error, the Attorney General must file an answering memorandum pointing out the discrepancy; otherwise, the Attorney General may submit a letter waiving the filing of an answering memorandum. Any answering memorandum must be in the form prescribed by ORAP 7.10 for answers to motions and may not be longer than 10 pages, except that when the court has consolidated review of more than one petition to review a ballot title in one proceeding, the length of the answering memorandum may be increased by five pages per each additional petition. The Attorney General must file the original answering memorandum, with proof of service on counsel for the petitioner. The answering memorandum may set forth concisely the reasons why the Attorney General believes the ballot title filed with the Secretary of State substantially complies with the requirements of ORS 250.035 or, alternatively, may suggest alterations that in the Attorney General's judgment would make the ballot title substantially comply. The answering memorandum may also contain under separate heading legal arguments and citation to legal authorities.

(7) Any person who is interested in a ballot title that is the subject of a petition, including the chief petitioner of a measure, may file a motion in the form prescribed by ORAP 7.10, asking leave of the Supreme Court to submit a memorandum as an *amicus curiae*. The motion must be accompanied by the proposed memorandum that the *amicus curiae* intends to submit. The proposed memorandum must be in the form prescribed by ORAP 7.10 for answers to motions and may not be longer than 10 pages. The motion and proposed memorandum must be filed and served on or before the date that the answering memorandum is due. If a party seeks to appear as an *amicus curiae* after the Attorney General has filed a modified ballot title after referral from the Supreme Court, then the motion and memorandum must be filed with and actually received by the Administrator and must be served on and actually received by all parties within five business days after the date that a party has filed an objection.

(8) The petitioner has five business days after the filing of the answering memorandum, unless a shorter time is ordered by the court, to file a reply memorandum. Any reply memorandum must be in the form prescribed by ORAP 7.10 for answers to motions and must not be longer than five pages. The petitioner must file the original reply memorandum, with proof of service on the Attorney General.

(9) After the filing of all memoranda permitted, the Supreme Court will consider the matter without the filing of briefs or presentation of oral argument unless otherwise ordered by the court, either on its own motion or on request of a party. If the court orders oral argument, the petitioner shall argue first. Unless otherwise ordered by the court, an *amicus curiae* may not

participate in oral argument.

(10) (a) For ballot title review proceedings in which the Supreme Court has referred the Attorney General's certified ballot title to the Attorney General for modification, the Attorney General must prepare a modified ballot title. The modified ballot title must be filed with and actually received by the Administrator, and it must be served on and actually received by all parties, within five business days after the date of the referral.

(b) The petitioner, or an intervenor under paragraph (10)(c), may file an objection to the modified ballot title within five business days after the date of filing of the modified ballot title. An objection or proposed objection under paragraph (10)(c) must be in the form prescribed by ORAP 7.10, and it may not exceed 10 pages. The objection or proposed objection must be filed with and actually received by the Administrator within the time required. The objection or proposed objection must be served on and actually received by all parties within five business days after the date of filing of the modified ballot title. The objection or proposed objection may be filed and served by telephonic facsimile communication as provided by ORAP 7.35(3).² A party may file a response to the objection or proposed objection within five business days after the date of filing of the objection, unless the court otherwise directs.

(c) A person who submitted written comments to the Secretary of State under ORS 250.067 regarding the original ballot title, or the chief petitioner, may seek to intervene as a party to object to a modified ballot title when the Supreme Court has referred the Attorney General's certified ballot title to the Attorney General for modification. The person must file a motion to intervene, together with a proposed objection to the modified ballot title, within five business days after the date the modified ballot title has been filed. The motion and proposed objection must comply with the filing and service requirements prescribed by paragraph (10)(b). The proposed objection may assert only that the modifications by the Attorney General themselves have caused the modified ballot title to not comply substantially with the requirements of ORS 250.035.

(11) (a) If the Supreme Court issues a dispositional decision in which the court dismisses the petition, certifies the Attorney General's certified ballot title or certifies the Attorney General's modified ballot title, with or without additional modification, the Administrator will issue the appellate judgment on the next judicial day after the filing date of the decision.

(b) If the court refers the Attorney General's certified ballot title to the Attorney General for modification or refers the Attorney General's modified ballot title to the Attorney General for further modification and no party files a timely objection to a modified ballot title, then the Supreme Court will certify the modified ballot title, and the Administrator will issue the appellate judgment, on the next judicial day after the time for filing an objection expires.

(c) The court's decision shall become effective in accordance with ORAP 14.05(2)(c).

¹ See footnote 2 to ORAP 1.35 for the service address of the Attorney General.

² The facsimile transmission number for the Administrator is (503) 986-5560. The facsimile transmission number for the Attorney General (Appellate Division) is (503) 378-6306.

Rule 11.34
ESTIMATE OF FINANCIAL IMPACT REVIEW

(1) Any person entitled to petition under ORS 250.131 for review of an estimate of financial impact may file with the Administrator a petition to review the estimate. The petition must be filed not later than 85 calendar days before the election at which the measure is to be voted on. The petition shall not concern the amount of the estimate or whether an estimate should be prepared.

(2) The provisions of ORAP 11.30(2), (3), (4), (5), (7), (8), and (9) shall apply, except that:

(a) The officials named in ORS 250.125(9), ~~ORS 250.125(8)~~ shall be designated "Respondents," the Attorney General shall not be designated as a respondent, and the title of the proceeding shall be "Petition to Review Estimate of Financial Impact"; and

(b) The petition shall show proof of service on each official named in ORS 250.125(9), ~~ORS 250.125(8)~~ and the Attorney General.

(3) The petition shall inform the court of the petitioner's interest in the matter, the full text of the estimate of financial impact as filed by the Secretary of State, and the reasons the estimate was prepared, filed or certified in violation of the procedures specified in ORS 250.125 or ORS 250.127.

(4) The answering memorandum shall set forth concisely the reasons why the estimate challenged was prepared, filed or certified in compliance with the procedures specified in ORS 250.125 or ORS 250.127. An answering memorandum shall include the complete estimate as filed with the Secretary of State or as revised under ORS 250.127, if the respondent claims that the estimate as contained in the petition is in error.

(5) The Administrator will issue the appellate judgment on the next judicial day after the filing date of the Supreme Court's dispositional decision.

Rule 11.35
REAPPORTIONMENT REVIEW

The practice and procedure for review of reapportionment under Article IV, section 6, of the Oregon Constitution shall be as follows:

- (1) Any qualified elector of the state seeking review of reapportionment shall file a petition on or before August 1 of the year in which the Legislative Assembly enacts the reapportionment.¹
- (2) The petition shall be prepared in compliance with ORAP 7.10, governing motions, and shall contain:
 - (a) A title page containing a caption identifying the person or persons seeking review of reapportionment as the petitioner or petitioners, and the Legislative Assembly as the respondent and the litigant contact information required by ORAP 1.30.
 - (b) A statement showing that the petitioner is a qualified elector of the state.
 - (c) A prayer for specific relief.
 - (d) The signature of the petitioner or the petitioner's attorney.
- (3) The petition shall be accompanied by one copy of such part of the reapportionment as is necessary for a determination of the question presented and the relief sought.
- (4) The petitioner shall file with the Administrator the original petition with proof of service of a copy of the petition on the Secretary of the Senate, the Chief Clerk of the House, the Secretary of State, and the Attorney General.² The petition shall be accompanied by the filing fee prescribed in ORS 21.010(5).
- (5) A petitioner shall serve and file an opening brief in support of the petition on the same date that petitioner serves and files the petition.
- (6) (a) The Legislative Assembly, the Secretary of State, or any other person who desires to oppose a petition shall, no later than 10 business days after the date the petitioner's opening brief is due, file with the Administrator the original answering brief and, if not exempt from payment of filing fees, pay the respondent's first appearance fee prescribed in ORS 21.010(5). ~~ORS 21.040~~—Any party who files an answering brief shall be known in the review proceeding as a "respondent."
 - (b) A respondent shall serve the answering brief on the petitioner, and proof of service shall be endorsed on or attached to the answering brief. If the answering brief responds to a petition by more than one petitioner, service of the brief need only be made on the petitioner whose name is first identified in the caption as a petitioner or on the

attorney for the petitioners.

(7) Reply briefs are discouraged, but, if a petitioner chooses to file a reply brief, the petitioner shall file the reply brief within five business days after the date that a respondent's answering brief is due.

(8) *Amicus curiae* briefs are discouraged, but, if a person applies for leave to file an *amicus curiae* brief, the person shall file the application, accompanied by the brief tendered for filing, on the date that a respondent's answering brief is due.

(9) Any brief in support of or in opposition to a petition, insofar as practicable, shall be filed in the same form as a brief on appeal in a civil action under these rules.

(10) Except for a petition for review of a reapportionment filed in the manner provided by ORS 19.260(1), a party may not rely on the date of mailing as the date of filing or service. A brief or other thing required or permitted to be filed under this rule must be physically filed by the prescribed day and must be physically served no later than one calendar day after the brief is filed.

(11) The Supreme Court may invite oral argument from any petitioner or respondent. However, ORAP 6.10 governs who will be allowed to argue.

(12) The Administrator shall not accept for filing, and the court will not consider, a petition for reconsideration tendered for filing after a reapportionment has become operative under Article IV, section 6, of the Oregon Constitution.

(13) Review of a reapportionment made by the Secretary of State under Article IV, section 6, subsection (3), of the Oregon Constitution shall be the same as for a reapportionment enacted by the Legislative Assembly except that:

(a) The caption of the petition shall identify the Secretary of State as the respondent; and

(b) The petition and brief shall be filed and served on or before September 15 of the year of reapportionment.

¹ If the deadline for filing a petition is a Saturday or Sunday, the Oregon Constitution may prohibit extending the deadline to the next business day. See *Hartung v. Bradbury*, 332 Or 570, 595 n 23, 33 P3d 972 (2001).

² See ORAP 1.35(1)(a) for the filing address of the Administrator. See footnote 2 to ORAP 1.35 for the service address of the Attorney General.

Rule 12.05
DIRECT APPEAL OR JUDICIAL
REVIEW IN THE SUPREME COURT

(1) Where a statute authorizes a direct appeal from a court of law to the Supreme Court,¹ except as otherwise provided by statute or by rule of appellate procedure, the appeal shall be taken in the manner prescribed in the rules of appellate procedure relating to appeals generally.

(2) Where a statute authorizes direct judicial review of an agency order or a legislative enactment by the Supreme Court,² except as otherwise provided by statute, the judicial review shall be initiated and conducted in the manner prescribed in the rules of appellate procedure relating to judicial review of agency orders generally.

(3) The notice of appeal or petition for judicial review shall state the statutory authority under which a direct appeal or judicial review is taken to the Supreme Court. Filing fees shall be assessed as provided in ORS 21.010.

(4) When required to do so by statute, the court will expedite its disposition of the appeal or judicial review.³

(5) On motion of a party or on the court's own initiative, the court may establish a special briefing schedule for the appeal or judicial review.

¹ See, e.g., ORS 305.445 (tax court judgments and orders), ORS 662.120 (injunctions in labor dispute cases), and ORS 138.045(2) ~~ORS 138.060(2)~~ (certain pretrial orders in murder and aggravated murder cases).

² See, e.g., ORS 469.403(3) (nuclear facility siting certificates).

³ See, e.g., ~~ORS 138.060(2) and ORS 138.261(5)~~ ORS 138.261(6) and ORS 138.045(2) (requiring expedited disposition on appeal to the Supreme Court of a pretrial order dismissing or setting aside the accusatory instrument or suppressing evidence in a murder case), ~~of appeals of certain pretrial orders in criminal cases~~.

Rule 12.07
EXPEDITED APPEAL OF CERTAIN
PRETRIAL ORDERS IN CRIMINAL CASES

(1) On appeal under ORS 138.045(2) ~~ORS 138.060(2)~~ from a pretrial order dismissing or setting aside the accusatory instrument or suppressing evidence, when a defendant is charged with murder or aggravated murder and is in custody:

(a) The case caption of any brief, motion, petition, or other paper filed with

the court shall include the words "EXPEDITED APPEAL UNDER ORS 138.045(2),"
~~ORS 138.060(2)."~~

(b) Appellant's opening brief shall be due 28 days after the transcript settles. Failure to file the opening brief within the prescribed time will result in automatic dismissal of the appeal.

(c) Respondent's answering brief shall be due 28 days after appellant's opening brief is served and filed. If respondent fails to file a brief within the prescribed time, the appeal will be submitted on appellant's opening brief and oral argument, and respondent will not be allowed to argue the case.

(2) On a petition for review of a decision of the Court of Appeals in an appeal under ORS 138.045(1)(a) or (d) ~~ORS 138.060(1)(a) or (c)~~ from a pretrial order dismissing or setting aside the accusatory instrument or suppressing evidence, when a defendant is charged with a felony and is in custody:

(a) The case caption of any brief, motion, petition, or other paper filed with the court shall include the words "EXPEDITED REVIEW UNDER ORS 138.045(1),"
~~ORS 138.060(1)."~~

(b) If the petitioner on review files a notice of intent to file a brief on the merits and fails to file a brief within the time prescribed by ORAP 9.17, the review, if allowed, will be submitted to the court on the petitioner's petition for review, the response to the petition for review (if any), the brief on the merits filed by respondent (if any), the parties' briefs in the Court of Appeals, and oral argument.

(3) In all cases subject to this rule:

(a) Absent extraordinary circumstances, the court will not grant an extension of time or reschedule oral argument.

(b) A motion made before oral argument will not toll the time for transmitting the record, filing briefs, or hearing oral argument.

Rule 12.10
AUTOMATIC REVIEW IN
DEATH SENTENCE CASES

(1) Whenever a defendant is sentenced to death, the judgment of conviction and sentence of death are subject to automatic and direct review by the Supreme Court without the defendant filing a notice of appeal.

(2) If, in addition to a conviction for aggravated murder forming the basis for the death sentence, a defendant is convicted of one or more charges arising from the same charging

instrument, the Supreme Court shall have jurisdiction to review any such conviction without the filing of a notice of appeal.

(3) Immediately after entry of the judgment of conviction and sentence of death, the trial court administrator shall prepare a packet consisting of the following:

(a) A copy of the judgment of conviction.

(b) A copy of the order of sentence of death unless that sentence is contained in the judgment of conviction.

(c) A certificate by the trial court administrator stating:

(i) the date of entry of each writing described above.

(ii) the names, mailing addresses, telephone numbers, and e-mail addresses of the attorneys of record for the state and for the defendant at the date of entry of each writing described above.

(d) A cover sheet captioned "In the Supreme Court of the State of Oregon" and showing the court in which the judgment of conviction and sentence of death were made, the title of the case, the trial court case number, the name of the judge who imposed the sentence of death and the caption: "Automatic Death Sentence Review."

(4) The trial court administrator shall serve a true copy of the packet on the defendant and on each attorney and the transcript coordinator. The trial court administrator shall endorse proof of service on the original of the packet and send the original to the Administrator, who shall immediately notify the Chief Justice of receipt thereof.

(5) (a) Service of a copy of the packet on the transcript coordinator shall be deemed to be authorization for the transcript coordinator to arrange for preparation of a transcript of all parts of the criminal proceeding, including all pretrial hearings and selection of the jury.

(b) A transcript shall meet the specifications of ORAP 3.35.

(c) A transcript shall be filed within 60 days after the date the packet is served on the transcript coordinator.

(d) Transcripts shall be settled in the same manner as on an appeal pursuant to ORS 138.015 ~~ORS 138.185~~ and ORS 19.370, except that a first extension of time of 30 days to file a motion to correct the transcript or add to the record will be deemed granted if, within 15 days after the transcript is filed, a party files a notice of need for additional time to file such a motion.

(6) (a) If the defendant desires to file an opening brief, the brief is due 180 days

after the transcript is settled.

(b) If the state desires to file an answering brief, the brief is due:

(i) When the defendant does not desire to file an opening brief, 180 days after the transcript is settled.

(ii) When the defendant files an opening brief, 180 days after the defendant serves and files the defendant's opening brief.

(c) If the defendant has filed an opening brief, the defendant may file a reply brief, which shall be due 90 days after the state serves and files its answering brief.

(d) Specifications for briefs shall be those set forth in ORAP 5.05, except that the maximum length of a brief without obtaining leave of the court for a longer brief is 28,000 words or, if the certification under ORAP 5.05(2)(d) certifies that the preparer does not have access to a word-processing system that provides a word count, 100 pages.

(7) Notwithstanding UTCR 6.120(1), the trial court administrator shall send the trial court file and exhibits to the Administrator.

(8) Preparation, service, and sending of the packet, the trial court file and exhibits offered, preparation of transcripts, preparation of briefs, and review by the Supreme Court shall be accorded priority over all other cases by all persons concerned.

Rule 16.30 CONVENTIONAL FILING REQUIREMENTS

(1) The following documents must be conventionally filed:

(a) A document filed under seal, including a motion requesting that a simultaneously filed document be filed under seal or a document with an attachment that is sealed by statute or court order.

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

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

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

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

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

(3) The following documents may be conventionally filed or eFiled:

(a) A notice of appeal, petition for judicial review, cross-petition for judicial review, or petition under original Supreme Court or Court of Appeals jurisdiction.¹

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

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

ORAP COMMITTEE 2020

PROPOSAL NO.: 31

PROPOSER: n/a

AMENDING RULE(S): ORAP 4.15 etc. -- Make Permanent Temporary Amendments
by CJO 18-083 / 18-08

DATE SUBMITTED: n/a

EXPLANATION:

By this Chief Justice Order / Chief Judge Order, the appellate courts adopted technical amendments to

- delete the reference to an agency submitting a record by optical disk from ORAP 4.15;
- correct an error in phrasing in ORAP 11.25(2)(a); and
- modify the explanation of confidentiality in ORAP 15.05(6) regarding the Appellate Settlement Conference Program.

The amendments will expire on December 31, 2020, unless made permanent.

RULE AS AMENDED:

[See CJO 18-083 / CJO 18-08 below.]

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

In the Matter of the Adoption)
of Temporary Amendments to the) Chief Justice Order 18-083
Oregon Rules of Appellate Procedure) Chief Judge Order 18-08

**ORDER ADOPTING TEMPORARY AMENDMENTS
TO OREGON RULES OF APPELLATE PROCEDURE AS AMENDED**

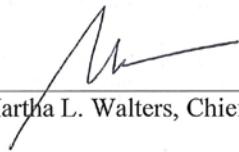
Pursuant to ORAP 1.10(2), the Supreme Court and Court of Appeals may, from time to time, adopt temporary rules and temporary amendments to the Oregon Rules of Appellate Procedure.

The appellate courts have adopted permanent and temporary amendments to the rules that will become effective January 1, 2019. CJO 18-068 / CJO 18-06 (permanent amendments); CJO 18-057 / CJO 18-05 (temporary amendments). By this order, the courts adopt additional temporary amendments to the amended versions of the following rules: 4.15; 11.25(2)(a); and 15.05(6)(a).

Amended rules are shown on the attached pages. Marks in the left margin show lines that contain changes. Deleted material is shown in ~~double-strikeout~~ print; added material is shown in double-underline print.

The amendments adopted by this order are effective January 1, 2019. They will expire on December 31, 2020, if not previously adopted as permanent amendments.

Dated this 17th day of December, 2018.



Martha L. Walters, Chief Justice

Dated this 17th day of December, 2018.



James C. Egan, Chief Judge

Rule 4.15
FORM, CONTENT, AND SERVICE OF PETITION
FOR JUDICIAL REVIEW

(1) A petition for judicial review shall be typewritten, double-spaced, and substantially in the form illustrated in Appendix 4.15-1 or Appendix 4.15-2 and must contain:

* * * * *

(d) A self-represented party who consents to service of the agency record by ~~optical disk² or SFTP~~ as provided in ORAP 4.20 must so state in the petition for judicial review and provide the party's email address in the petition.²³ At any time before the agency transmits the record to the court, a self-represented party who has consented to service of the agency record by electronic means may revoke that consent by notifying the court and the agency. A self-represented party who has provided the court and the state agency with an email address under this paragraph must notify the court and the agency of a change of email address.

* * * * *

(3) The petition shall show proof of service on:

(a) the agency whose order, rule, or ruling is involved (unless the agency is the petitioner), even if the agency is not a party;

(b) the Attorney General, even if the agency is not a party.³⁴ In a workers' compensation case, only if the State Accident Insurance Fund is a party to the case and is representing a state agency, the petition shall show proof of service on the Attorney General;

(c) all other parties of record in the proceeding; and

(d) any other person required by law to be served.⁴⁵

(4) The petition shall include a certificate of filing specifying the date the petition for judicial review was filed with the Administrator.

¹ See ORAP 2.25(2) regarding the authority of the Administrator to correct the case title.

~~² See ORAP 1.15(3)(s) for a definition of "optical disk."~~

²³ See ORAP 4.20 regarding transmitting and serving the agency by Secure File Transfer Protocol (SFTP).

³⁴ See footnote 2 to ORAP 1.35 for the service address of the Attorney General.

⁴⁵ Nothing in ORAP 4.15(3) shall be construed to require service of briefs on an agency or the Attorney General. For requirements governing the service of briefs, *see* ORAP 5.05(5) and ORAP 5.12.

See ORS 183.482 for additional requirements respecting the contents of a petition for judicial review and service requirements; ORS 656.298 (same for workers' compensation cases).

**Rule 11.25
BAR ADMISSION, REINSTATEMENT,
AND DISCIPLINARY PROCEEDINGS**

* * * * *

(2) Disciplinary and Contested Reinstatement Proceedings

(a) A petition concerning a disciplinary proceeding or a trial panel opinion in a former member's contested reinstatement shall be filed with the Administrator, with proof of service on all parties, within 30 days after written notice by the Bar's Disciplinary Board Clerk of ~~the court's~~ receipt of the trial panel opinion.

* * * * *

**Rule 15.05
APPELLATE SETTLEMENT
CONFERENCE PROGRAM**

* * * * *

(6) Confidentiality

(a) ~~Program settlement conferences are subject to ORS 36.210 to 36.238. Program communications made from the assignment of an appeal to the program through the reactivation and removal of that appeal from the program are confidential. The Appellate Settlement Conference Program is a "mediation program," as defined in ORS 36.110(8), and the provisions of ORS 36.100 to 36.238 apply to the program, including the provisions of ORS 36.220 providing that "mediation communications," as defined in ORS 36.110(7), are confidential. For purposes of the program, "mediation," which is defined in ORS 36.110(5), begins when an appeal is referred to the program and ends when the program director removes the appeal from the program, or when the court dismisses the appeal, whichever occurs first.~~

* * * * *

ORAP COMMITTEE 2020

PROPOSAL NO.: 32

PROPOSER: n/a

AMENDING RULE(S): ORAP 4.20(6) -- Make Permanent Temporary Amendment to Rule by CJO 19-016 / CJO 19-02

DATE SUBMITTED: n/a

EXPLANATION:

By this Chief Justice Order / Chief Judge Order, the appellate courts adopted technical amendments to correct the amount of time that (due to technical limitations) documents will be available on the court's SFTP server. The amendments will expire on December 31, 2020, unless made permanent.

RULE AS AMENDED:

[See CJO 19-016 / CJO 19-02 below.]

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

In the Matter of the Adoption)
of Temporary Amendments to the) Chief Justice Order 19-016
Oregon Rules of Appellate Procedure) Chief Judge Order 19-02

**ORDER ADOPTING TEMPORARY AMENDMENT
TO OREGON RULES OF APPELLATE PROCEDURE**

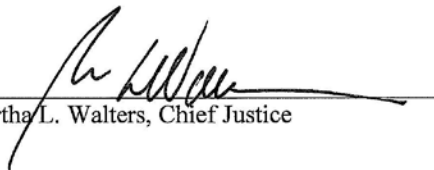
Pursuant to ORAP 1.10(2), the Supreme Court and Court of Appeals may, from time to time, adopt temporary rules and temporary amendments to the Oregon Rules of Appellate Procedure.

By this order, the courts adopt a temporary amendment to ORAP 4.20(6)(c)(iii).

The amended portion of the rule is shown on the attached page. Marks in the left margin show the lines that contain changes. Deleted material is shown in ~~double-strikeout~~ print; added material is shown in double-underline print.

The amendment adopted by this order is effective as of the last dated signature on this order. The amendment will expire on December 31, 2020, if not previously adopted as a permanent amendment.

Dated this 4 day of April, 2019.


Martha L. Walters, Chief Justice

Dated this 15th day of April, 2019.


James C. Egan, Chief Judge

Rule 4.20
RECORD ON JUDICIAL REVIEW

* * * * *

(6) Preparing and Transmitting the Record by Electronic Means.

* * * * *

(c) The following qualifies as service of the record on a party to the judicial review, as provided in subsection (3):

* * * * *

(iii) Uploading the record to the Judicial Department's SFTP site as provided in the Instructions and providing notification to the other party that the upload is complete. The record will remain on the SFTP site for 14 ~~21~~ days to allow a party being served by SFTP to retrieve the record and copy it to a suitable location on the party's computer.

* * * * *

ORAP COMMITTEE 2020

PROPOSAL NO.: 33
PROPOSER: n/a
AMENDING RULE(S): ORAP 1.35 etc. -- Make Permanent Temporary Amendment to Rule by CJO 19-052 / CJO 19-05
DATE SUBMITTED: n/a

EXPLANATION:

By this Chief Justice Order / Chief Judge Order, the appellate courts adopted technical amendments to show the Supreme Court's new physical address. The amendments will expire on December 31, 2020, unless made permanent.

RULE AS AMENDED:

[See CJO 19-052 / CJO 19-05 below.]

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

In the Matter of the Adoption)
of Temporary Amendments to the) Chief Justice Order 19-052
Oregon Rules of Appellate Procedure) Chief Judge Order 19-05

**ORDER ADOPTING TEMPORARY AMENDMENTS
TO OREGON RULES OF APPELLATE PROCEDURE**

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

By this order, the courts adopt temporary amendments to ORAP 1.35(1)(a)(ii)(B); Appendix 2.05; Appendix 4.15-1; Appendix 4.15-2; and Appendix 12.08.

The amendments are shown on the attached pages. Marks in the left margin show the lines that contain changes. Deleted material is shown in ~~double-strikeout~~ print; added material is shown in double-underline print.

The amendments adopted by this order will become effective on October 7, 2019. Because the amendments are only to address a temporary facility move, the amendments will not be made permanent. They will expire on December 31, 2020, except as the courts may extend by additional temporary amendments prior to that time.

Dated this 3rd day of September, 2019.



Martha L. Walters, Chief Justice

Dated this 4th day of September, 2019.



James C. Egan, Chief Judge

Rule 1.35
FILING AND SERVICE

(1) Filing

(a) Filing Defined: Delivery, Receipt, and Acceptance

(i) A person intending to file a document in the appellate court must cause the document to be delivered to the Appellate Court Administrator.

(ii) Delivery may be made as follows and otherwise as provided under subsection (2) of this rule:

(A) Unless an exception applies under ORAP 16.30 or ORAP 16.60(2), an active member of the Oregon State Bar must deliver any document for filing using the appellate courts' eFiling system.¹

(B) Any other person must file any document in conventional form, by delivering the document via U.S. Postal Service or commercial delivery service to the Appellate Court Administrator, Appellate Court Records Section, 1163 State Street, Salem, Oregon 97301-2563 or in person to the Appellate Court Administrator, Appellate Court Records Section, 2850 Broadway St NE, Salem, Oregon 97303-6500.

APPENDIX 2.05

Illustration for ORAP 2.05

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

_____))
Plaintiff-Appellant,)
(or Plaintiff-Respondent)) _____ County Circuit
) Court No. _____
)
v.)
)
_____))
Defendant-Respondent.) **NOTICE OF APPEAL**
(or Defendant-Appellant))

1.

(Plaintiff/Defendant) hereby gives notice of appeal from the judgment entered in this case on [date of judgment], signed by Judge _____, in the _____ County Circuit Court.

2.

The parties to this appeal are:

Appellant(s)	Respondent(s)
_____	_____
_____	_____

3.

The name, bar number, address, telephone number, and email address of the attorney(s) for each party represented by an attorney is:

Name & Bar Number _____	Representing _____
Address _____	Telephone Number _____
Email Address _____	
Name & Bar Number _____	Representing _____
Address _____	Telephone Number _____
Email Address _____	

The name, address, and telephone number of each self-represented party is:

Name _____
Address _____ Telephone Number _____

Name _____
Address _____ Telephone Number _____

4.

Appellant designates the record in its entirety. Thus, in addition to the trial court file, appellant designates all exhibits, and the record of oral proceedings.

[or]

In addition to the trial court file, appellant designates only the following parts of the record: _____ all exhibits; _____ the record of the following oral proceedings: _____; other: _____.

5.

[If the record includes an audio or video recording played in the trial court and the appellant wants the transcript to include a transcript of the recording:]

The record includes one or more audio or video recordings that were played in the trial court, and appellant wants the transcript to include a transcript of those recordings. The dates of each hearing at which such a recording was played are:

_____.

6.

[Only if less than the entire record is designated in paragraph 4:]

Appellant intends to rely on the following points:

_____.

7.

This appeal is timely and otherwise properly before the Court of Appeals because:

_____.

8.

Attached to this notice of appeal is a copy of the judgment being appealed. Also attached

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are copies of any other materials pertinent to determining appellate jurisdiction.

9.

[If filing two or more notices of appeal in cases that were consolidated in the trial court and the appellant would like the cases to be consolidated in the appellate court:]

Appellant requests that this case be consolidated in the appellate court with the appeal from _____ County Circuit Court, case number _____, in which a notice of appeal was filed on _____.

10.

CERTIFICATE OF SERVICE

I certify that on [date] , I served a true copy of this notice of appeal on:

[Opposing party(ies) or attorney for opposing party(ies)]

[trial court administrator]

[transcript coordinator, if a transcript is designated as part of the record on appeal]

by [specify method of service]:

- United States Postal Service, ordinary first class mail
- United States Postal Service, certified or registered mail, return receipt requested
- hand delivery
- other (specify) _____

10.

CERTIFICATE OF FILING

I certify that on [date] , I filed the original of this notice of appeal with the Appellate Court Administrator ~~at this address:~~

~~Appellate Court Administrator~~

4

~~Appellate Court Records Section~~
~~1163 State Street~~
~~Salem, Oregon 97301-2563~~

by [specify method of filing]:

- United States Postal Service, ordinary first class mail
- United States Postal Service, certified or registered mail, return receipt requested
- hand delivery
- other (specify) _____

[Signature of appellant or attorney]

[Typed or printed name of appellant
or attorney]

APPENDIX 4.15-1

Illustration for ORAP 4.15
(Other than Workers' Compensation Case)

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

[The title should be set up, to the extent possible, as it was before the agency, showing the parties with their appropriate appellate designations]) [Agency Name]
)
) No. _____
) CA A _____

PETITION FOR JUDICIAL REVIEW

Petitioner seeks judicial review of the final order of the _____ in case number _____, dated _____.

The parties to the judicial review proceeding before the Court of Appeals are:

Petitioner(s) Respondent(s)

The name, bar number, address, telephone number, and email address of the attorney(s) for each party represented by an attorney is:

Name & Bar Number _____ Representing _____
Address _____ Telephone Number _____
Email Address _____

Name & Bar Number _____ Representing _____
Address _____ Telephone Number _____
Email Address _____

The name, address, and telephone number of each self-represented party is:

Name _____
Address _____ Telephone Number _____
Email address _____

For self-represented parties: Please check here if you consent to receiving notices from the appellate court by email.

For self-represented parties: Please check here if you consent to receiving the agency record by Secure File Transmission Protocol (SFTP).

A. Attached to this petition is a copy of the order, rule or ruling for which judicial review is sought. If a copy of the order, rule or ruling is not attached, the nature of the order for which review is sought is _____.

B. Petitioner was a party to the administrative proceeding which resulted in the order for which review is sought.

[or]

Petitioner was denied status as a party to the administrative proceeding that resulted in the order for which review is sought.

[or]

Petitioner is adversely affected or aggrieved by the order as set forth in an affidavit attached to this petition.

C. Petitioner is not willing to stipulate that the agency record may be shortened.

[or]

Petitioner is willing to stipulate that the agency record may be shortened and designates these parts of the record to be included in the record: _____.

DATED this ____ day of _____, _____.

Attorney for Petitioner
[Sign and print/type name, bar number,
address, telephone number, and email
address]

CERTIFICATE OF SERVICE

I certify that on [date], I served a true copy of this petition for judicial review on:

[State agency and address]

Attorney General of the State of Oregon
Office of the Solicitor General
400 Justice Building
1162 Court Street NE

_____ Salem, Oregon 97301-4096

[Other party(ies) or attorney for other party(ies)]

by [specify method of service]:

- United States Postal Service, ordinary first class mail
- United States Postal Service, certified or registered mail, return receipt requested
- hand delivery
- other (specify) _____

CERTIFICATE OF FILING

I certify that on [date] , I filed the original of this petition for judicial review with the Appellate Court Administrator ~~at this address:~~

~~_____ Appellate Court Administrator~~
~~_____ Appellate Court Records Section~~
~~_____ 1163 State Street~~
~~_____ Salem, Oregon 97301-2563~~

by [specify method of filing]:

- United States Postal Service, ordinary first class mail
- United States Postal Service, certified or registered mail, return receipt requested
- hand delivery
- other (specify) _____

[Signature of petitioner or attorney]

[Typed or printed name of petitioner or attorney]

APPENDIX 4.15-2

Illustration for ORAP 4.15
(Workers' Compensation Case)

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of)	
the Compensation of)	
_____ , Claimant.)	WCB Case No. _____
)	
_____ ,)	CA A _____
Petitioner,)	
)	
v.)	
_____ ,)	
Respondent.)	

PETITION FOR JUDICIAL REVIEW
OF ORDER OF THE WORKERS' COMPENSATION BOARD

Petitioner seeks judicial review of the Workers' Compensation Board Order on Review dated _____.

The parties to the judicial review proceeding before the Court of Appeals are:

Petitioner(s)	Respondent(s)
_____	_____
_____	_____

The name, bar number, address, telephone number, and email address of the attorney(s) for each party represented by an attorney is:

Name & Bar Number _____	Representing _____
Address _____	Telephone Number _____
Email Address _____	

Name & Bar Number _____	Representing _____
Address _____	Telephone Number _____
Email Address _____	

The name, address, and telephone number of each self-represented party is:

Name _____

Address _____ Telephone Number _____
Email address _____

- For self-represented parties: Please check here if you consent to receiving notices from the appellate court by email.
- For self-represented parties: Please check here if you consent to receiving the agency record by Secure File Transmission Protocol (SFTP).

The relief sought and reason relief should be granted are:

DATED this _____ day of _____, _____.

Attorney for Petitioner
[Sign and print/type name, bar number,
address, telephone number, and email
address]

CERTIFICATE OF SERVICE

I certify that on [date], I served a true copy of this petition for judicial review on:

Workers' Compensation Board

[address]

[Other party(ies) or attorney for other party(ies)]

- by [specify method of service]:
- ___ United States Postal Service, ordinary first class mail
 - ___ United States Postal Service, certified or registered mail, return receipt requested
 - ___ hand delivery
 - ___ other (specify) _____

CERTIFICATE OF FILING

I certify that on [date], I filed the original of this petition for judicial review with the

Appellate Court Administrator at this address:

~~Appellate Court Administrator~~
~~Appellate Court Records Section~~
~~1163 State Street~~
~~Salem, Oregon 97301-2563~~

by [specify method of filing]:

- United States Postal Service, ordinary first class mail
- United States Postal Service, certified or registered mail, return receipt requested
- hand delivery
- other (specify) _____

[Signature of petitioner or attorney]

[Typed or printed name of petitioner
or attorney]

APPENDIX 12.08
Illustration for ORAP 12.08

IN THE SUPREME COURT OF THE
STATE OF OREGON

State of Oregon,)	
Plaintiff,)	
v.)	_____ County Circuit
Defendant.)	Court No. _____
)	
Appellant(s),)	NOTICE OF INTERLOCUTORY
v.)	APPEAL UNDER ORS 147.537
Respondent(s).)	

1.

Appellant hereby gives notice of interlocutory appeal from the order entered in this case on [date of judgment], signed by Judge _____, in the _____ County Circuit Court.

2.

The parties to this appeal are:

Appellant(s)	Respondent(s)

3.

The name, bar number, address, telephone number, and email address of the attorney(s) for each party represented by an attorney is:

Name & Bar Number _____	Representing _____
Address _____	Telephone Number _____
Email Address _____	

Name & Bar Number _____ Representing _____
Address _____ Telephone Number _____
Email Address _____

The name, address, and telephone number of each self-represented party is:

Name _____
Address _____ Telephone Number: _____

Name _____
Address _____ Telephone Number: _____

4.

Appellant designates only the following parts of the record, copies of which accompany this notice as excerpts of the record:

5.

This appeal is timely and otherwise properly before the Supreme Court because:

6.

[In cases involving an audio record:]

Appellant hereby requests copies at appellant's expense of the audio record designated in paragraph 4 of this notice of appeal. Copies are to be served on the parties to the appeal listed in paragraph 3 of this notice of appeal.

7.

Attached to this notice of appeal is a copy of the order being appealed. Also attached is a memorandum of law as described in ORS 147.537(4).

8.

CERTIFICATE OF SERVICE

I certify that on [date] , I served a true copy of this notice of appeal on:

[Respondents as listed in ORS 147.537(6) or attorneys for respondents]

13

[trial court administrator]

[transcript coordinator, if a transcript
is designated as part of the record on
appeal]

by [specify method of service]:

- United States Postal Service, ordinary first-class mail
- United States Postal Service, certified or registered mail, return receipt requested
- hand delivery
- other (specify) _____

9.
CERTIFICATE OF FILING

I certify that on [date] , I filed the original of this notice of appeal with the Appellate Court Administrator at this address:

~~_____ Appellate Court Administrator~~
~~_____ Appellate Court Records Section~~
~~_____ 1163 State Street~~
~~_____ Salem, Oregon 97301-2563~~

by [specify method of filing]:

- United States Postal Service, ordinary first-class mail
- United States Postal Service, certified or registered mail, return receipt requested
- hand delivery
- other (specify) _____

[Signature of appellant or attorney]

[Typed or printed name of appellant
or attorney]