

**ORAP COMMITTEE 2024
TECHNICAL PROPOSALS**

MEETING DATE: FEBRUARY 22, 2024, 9 A.M. - 12 P.M.

- Proposal 1: ORAP 1.15 etc, ACMS Upgrade Temporary Rules
- Proposal 2: ORAP 1.35, Clarify Rules re Filing and Service
- Proposal 3: ORAP 2.05, Clarify Entry Date In Register
- Proposal 4: ORAP 4.35, Clarify Rule re Agency Withdrawal of Orders

- Proposal 10: ORAP 6.25 etc, Additional Edits re Nonprecedential Memorandum Opinions [NB: Related to proposal 6 on substantive agenda]

- Proposal 12: ORAP 9.05(3) etc, Include Citation to COA Opinions on Brief and Petition Covers [NB: Related to proposal 6 on substantive agenda]

- Proposal 14: ORAP 11.15, Opening Brief in Original SCT Mandamus

- Proposal 15: ORAP 12.27, Judicial Disability Proceeding Notification

- Proposal 16: ORAP 13.05(5), Extend Time to File Cost Bill to 28 Days

- Proposal 19: ORAP 16.10 etc, Additional Amendments re ACMS Upgrade

ORAP COMMITTEE 2024
February 22 Materials

AMENDING RULE(S): Proposal # 1 -- ORAP 1.15(3)(k), 1.32, 1.35, 1.45, 4.20, 5.20, 13.05(6), 16.03, 16.05, 16.10, 16.15, 16.20, 16.25, 16.30, 16.40, 16.45, and 16.60 -- Temporary Rules re: ACMS Upgrade

PROPOSER: [Temporary rules being made permanent.]

EXPLANATION:

The following temporary rules were adopted by CJO 23-051 / CJO 23-05 and became effective December 11, 2023. The primary purpose of the amendments were to address an upgrade to the Appellate Case Management System (ACMS) that allows filing by pro se parties. The amendments are proposed to be made permanent.

RULE AS AMENDED:

Rule 1.15
TERMINOLOGY

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

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(k) (i) "~~Paper Conventional~~ filing" means the delivery of a paper document to the Administrator for filing via the United States Postal Service, commercial delivery service, or personal delivery.

(ii) "~~Paper Conventional~~ service" means the delivery of a copy of a document on another person via the United States Postal Service, commercial delivery service, or personal delivery.

Rule 1.32

OUT-OF-STATE ATTORNEY AND SELF-REPRESENTED PARTY

Proposal # 1 -- ORAP 1.15(3)(k), 1.32, 1.35, 1.45, 4.20, 5.20, 13.05(6), 16.03, 16.05, 16.10, 16.15, 16.20, 16.25, 16.30, 16.40, 16.45, and 16.60 -- Temporary Rules re: ACMS Upgrade

CONTACT INFORMATION; CHANGES IN CONTACT INFORMATION FOR ATTORNEY, OUT-OF-STATE ATTORNEY, AND SELF-REPRESENTED PARTY

(1) An out-of-state attorney who appears by brief or argues the cause under [ORAP 6.10\(4\)](#) or [ORAP 8.10\(4\)](#) and any self-represented party must provide the court with the address for that attorney or party.

~~(a) A self-represented party or out-of-state attorney that provides the court with an email address on a paper filed document or files a document using the appellate eFiling system will receive court notifications by email. A self-represented litigant may request notification by regular mail instead of email by notifying the court. An out-of-state attorney also may consent to receive court notifications by email by providing an email address to the court.~~

~~(b) A self-represented party who consents to receive court notifications by email must provide the court with an email address and~~

~~(i) include a statement of consent to receive electronic notifications from the court in the party's initial filing in the cause; or~~

~~(ii) file a notice of consent to receive electronic notifications from the court.~~

~~(c) A self-represented party who has consented to receive electronic notifications from the court under paragraph (b) of this subsection may revoke that consent by notifying the court that the party's email address should no longer be used and that all court notifications should be sent to the party by conventional mail.~~

~~(d) An out-of-state attorney or self-represented party who provides the court with an address or email address under subsection (1) of this rule must notify the court of a change of address or email address.¹~~

(2) If an attorney for a party files a change of address with the Oregon State Bar, or if an out-of-state attorney or a self-represented party notifies the court of a change of mailing or email address in writing or otherwise, the attorney or party must inform all other parties ~~to the cause~~ of the change of ~~f~~ mailing or email address within seven calendar days.

¹ See also [ORAP 16.10\(2\)\(a\)\(v\)](#), regarding an updated email address for an Oregon State Bar member who is a registered user of the appellate ~~eFiling electronic filing~~ system.

**Rule 1.35
FILING AND SERVICE**

Proposal # 1 -- ORAP 1.15(3)(k), 1.32, 1.35, 1.45, 4.20, 5.20, 13.05(6), 16.03, 16.05, 16.10, 16.15, 16.20, 16.25, 16.30, 16.40, 16.45, and 16.60 -- Temporary Rules re: ACMS

(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.⁺

(B) Except as otherwise provided in ORAP 16.30 or 16.60(2), any ~~Any~~ other person ~~may must~~ file any document ~~by either the eFiling system or by paper filing. Paper filing should be made either 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, 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) "Initiating document" means any document that initiates a case, including but not limited to a notice of appeal; a petition for judicial review; a petition for a writ of mandamus, habeas corpus or quo warranto; and a

recommendation for discipline from the Oregon State Bar or the Commission on Judicial Fitness and Disability. As used in this rule, "initiating document" does not include a petition for review under [ORAP 9.05](#)² or a motion for extension of the time to file a petition for review under [ORAP 9.05](#).

(ii) ~~Use of the aUsing Appellate Courts' eFiling system Systemto deliver and file documents with either appellate court~~

~~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 an 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 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 by 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 an 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 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 an 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) ~~Paper Conventional~~ Filing Not Using U.S. Postal Service or Commercial Delivery Service

If a person does not deliver a document for filing via the [appellate](#) 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.²³

(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.⁴³ 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,⁵⁴ 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 only as provided in [ORAP 16.45](#).

(iii) Service by email or facsimile communication is permitted only as provided in ORCP 9 F or 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 ~~was 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 ~~for the county in which the judgment or appealable~~

order was entered, addressed to "transcript coordinator."

(iii) An authorized user of the trial court electronic filing system may serve a copy of a notice of appeal on the trial court administrator and the transcript coordinator by using the "Courtesy Copies" email function of that system. The email address for each judicial district's trial court administrator and transcript coordinator are available on the judicial district's website.

~~¹At this time, only a 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 members of the Oregon State Bar may not file a document with the appellate court using the eFiling System.~~

²¹ [ORAP 1.35](#) defines "initiating document" for purposes of ~~paper conventional~~ filing. For those purposes, the term does *not* include a petition for review under [ORAP 9.05](#). [ORAP 16.05](#) defines "initiating document" for purposes of eFiling and eService. For those purposes, the term *does* include a petition for review under [ORAP 9.05](#). [ORAP 16.05\(78\)](#).

³² 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.

⁴³ See Chief Justice Order No. 18-024 (order adopted pursuant to [ORS 21.682](#) prescribing standards and practices for waiver or deferral of court fees and costs) ([available at https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll10/id/263/rec/1](https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll10/id/263/rec/1)).

⁴ See, e.g., ORS 183.482(2), relating to cases arising under the Administrative Procedures Act, 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 1.45 FORM REQUIREMENTS

(1) Any document intended for filing with an appellate court must be legible and include:

(a) A caption containing the name of the court; the case number, if any, of the action, ~~if one has been assigned~~; the title of the document; and the names of the parties displayed on the front of the document.

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(b) The name, address, and telephone number of the party or the attorney for the party, if the party is represented.

(2) As provided in [ORAP 1.35\(1\)\(a\)\(v\)](#), the caption of a corrected or amended filing must prominently display the word "CORRECTED" or "AMENDED," as applicable, and the entire corrected or amended document must be filed with the court.

(3) Except as otherwise provided in [ORAP 5.05](#), parties may prepare any document to be filed in ~~an the~~ appellate court using either uniformly spaced type (such as produced by typewriters) or proportionally spaced type (such as produced by commercial printers and many computer printers). Uniformly spaced type must not exceed 10 characters per inch (cpi) for both the text of the thing filed and footnotes. If proportionally spaced type is used, it must not be smaller than 13 point for both the text of the thing filed and footnotes. This subsection does not apply to the record on appeal or review.

(4) Parties ~~using paper conventionally~~ filing ~~for~~ any document ~~in the appellate courts~~ are:

(a) Encouraged to print on both sides of each sheet of paper of the document being filed.

(b) Required to use recycled paper if recycled paper is readily available at a reasonable price in the party's community. ~~Parties also Further, parties~~ are encouraged to use paper containing the highest available content of post-consumer waste, as defined in [ORS 459A.500\(3\)](#), that is recyclable in the office paper recycling program in the party's community. The court will not decline to accept any filing on the ground that the filing does not comply with paragraph (a) or (b) of this subsection.¹

(c) Prohibited from using color highlighting on any part of the text.

¹ See [ORS 7.250](#).

Rule 4.20 RECORD ON JUDICIAL REVIEW

(1) As used in this rule:

(a) "Agency" means any state agency whose decision is the subject of a petition for judicial review filed in the Supreme Court or Court of Appeals; or the Oregon State Bar or Board of Bar Examiners in a proceeding under [ORAP 12.25](#), when the proceeding below included an evidentiary hearing.

(b) "Agency record" means the record before the agency, including the agency

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file, exhibits offered and received (or the subject of an offer of proof), and the transcript of oral proceedings, or the shortened part of the record if the parties have so stipulated pursuant to [ORS 183.482\(4\)](#), regardless of whether the agency actually conducted a hearing.

(c) "Each party" may mean multiple parties if two or more parties are represented by the same attorney or law firm.

(d) "Electronic means" means optical disk¹ or Secure File Transfer Protocol, or other similar electronic medium if approved by the Administrator.

(e) "Instructions" means the instructions, located on the Oregon Judicial Department website, for filing and serving the agency record via Secure File Transfer Protocol by electronic means.²

(f) "SFTP" means Secure File Transfer Protocol.

(2) Transmitting Agency Record to Appellate Court. The agency may transmit the agency record to the Administrator ~~conventionally~~ in paper form, by optical disk, or by Secure File Transfer Protocol (SFTP), as provided in this rule.

(3) Preparation of the Record Generally

(a) (i) If a state agency has its own process for preparing the record, including any transcript, for use by the agency or tribunal and the form of the record substantially complies with this rule, the agency may submit the record in that form, subject to this rule.

(ii) As provided in [ORS 656.298\(6\)](#), the record on judicial review in a workers' compensation case includes the transcript prepared under [ORS 656.295](#), all exhibits, and all decisions and orders entered during the hearing and review process.

(b) Agency file. The agency may prepare the agency file either with the first filed document on top (or in front) or the last filed document on top (or in front). If the agency is submitting the record in paper form, the pages of the agency file and the exhibits must be consecutively numbered at the bottom of each page.

(c) Exhibits.

(i) Except as provided in this paragraph, the agency must transmit all exhibits offered and received, including any exhibit that is the subject of an offer of proof. If the agency is transmitting the exhibits by electronic means, the

agency must identify each disk or electronic file containing exhibits as provided in the Instructions.

(ii) Except as provided in clause (iii) of this paragraph, if the exhibits include any nondocumentary exhibit, the agency must conventionally transmit the exhibit.

(iii) If the exhibits include an audio or video recording on an optical disk, the agency must transmit the disk as part of the exhibits. If the exhibits include one or more audio or video tape recordings, unless a party objects, the agency may copy the recording to an optical disk and transmit the optical disk in lieu of the tape recording. A party may move the court to supplement the record on judicial review with a transcript of any audio or video recording, to be prepared at the party's expense.

(d) Transcript. If the agency is submitting the record in paper form, the transcript must be prepared as provided in [ORAP 3.35\(1\)](#). If the agency is submitting the record by electronic means, the agency must comply with [ORAP 3.35\(2\)\(a\), \(b\), and \(d\)](#).

(e) Indexing. The record must be indexed. The index for the record must identify each document in the agency file, each volume of transcript, and each exhibit. If the agency is transmitting the record by electronic means, each document identified in an index must be electronically linked to the document. If the agency is transmitting the record by optical disk and the record requires more than one disk, the second and any subsequent disk must have a subindex of the documents on that disk, with electronic links to each document on the disk.

(f) The agency must assemble the record in this order: The agency file, the parties' exhibits, and any transcript.

(g) If the agency is transmitting the record in paper form, the agency must securely fashion the index and record in a suitable cover or folder showing on the outside the case name and the agency name and case number. If the agency is transmitting the record by electronic means, the agency must submit the record as provided in the Instructions.

(4) Confidential and Sealed Documents

(a) If the record contains a confidential or sealed document* as defined in [ORAP 3.07](#), the agency must place the document in an envelope (if the record is being transmitted ~~conventionally~~in paper form) or in a separate electronic file as provided in the Instructions (if the record is transmitted by electronic means). If the record includes multiple confidential documents, the agency may place all confidential documents in the

same envelope or electronic file. If the agency record includes multiple sealed documents, the agency must place each sealed document in a separate envelope or electronic file.

(b) An envelope containing a sealed or confidential document must indicate on the outside of the envelope the case name, the agency name and case number, and that it contains a sealed or confidential document. An electronic file containing a sealed or confidential document must be labelled as provided in the Instructions.

(c) If the agency is transmitting the record by optical disk, all confidential documents must be placed on a separate disk labelled as provided in the Instructions, and each sealed document must be transmitted by a separate disk. If the agency is transmitting the record by SFTP, any sealed document must be transmitted by either optical disk or in paper form.

(5) Transmitting the Record in Paper Form. If the agency transmits and serves the record in paper form, the record must have a suitable cover or folder bearing on the outside the title and agency number of the case and the name of the agency from which the review is taken. Whenever feasible, the agency must submit the original record. The agency's transmission and service of the record in paper form qualifies as transmission of the record within the meaning of [ORS 183.482\(4\)](#).

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

(a) If the agency transmits the record by electronic means, the agency must prepare the record as provided in the Instructions.

(b) The following qualifies as transmission of the record to the Administrator within the meaning of [ORS 183.482\(4\)](#):

(i) Delivery of the record in optical disk form to the Administrator for filing as provided in the Instructions; or

(ii) Uploading the agency record to the Judicial Department's SFTP site as provided in the Instructions, together with notification to the Administrator that the upload is complete, as provided in the Instructions.

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

(i) Delivery of the record in conventional paper form to the party;

(ii) Delivery of the record in optical disk form to the party; or

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(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 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.

(7) Service Generally

(a) On the same date the agency transmits the agency record to the Administrator, the agency must serve a copy of the record on each other party to the judicial review. The agency may serve the party ~~conventionally~~ in paper form, by optical disk, or by Secure File Transfer Protocol (SFTP), as provided in this subsection.

(b) Service on Party Represented by Attorney. If the agency transmits the record to the Administrator by optical disk or SFTP, the agency must serve a copy of the record on any party represented by an attorney, including an out-of-state attorney admitted *pro hac vice*, by the same means unless the attorney has made arrangements with the agency for service by other means.

(c) Service on Self-Represented Party.

(i) The agency may serve the record on a self-represented party ~~conventionally~~ in paper form or by optical disk.

(ii) The agency may serve the record on a self-represented party by SFTP, if the party has stated the party's willingness to be served by SFTP as provided in [ORAP 4.15\(1\)\(d\)](#) or if the agency otherwise has obtained the party's consent to be served by SFTP.

(iii) If the agency serves a self-represented party by optical disk or SFTP, the agency must notify the party that, if the party is unable to access the record, the party must notify the agency within 14 days of receipt, with contact information for the agency.³ If a party so notifies the agency, the agency must serve the record on the party ~~conventionally~~ in paper form within seven days.

(d) If the record includes one or more confidential documents* as defined in [ORAP 3.07](#), the agency must serve the parties with a copy of the confidential document. If the record includes one or more sealed documents as defined in [ORAP 3.07](#), the agency must not serve a copy of the sealed document on the parties.

(e) The agency must accompany the record as transmitted to the court with proof of service of the record on each party, stating the manner in which each party was

served.

(8) Transmitting and Serving Corrected or Additional Agency Record

(a) The record is deemed settled when the time to move to correct the record as provided in [ORAP 4.22](#) has expired or the process under that rule has been completed.

(b) If the agency or the court corrects or adds to any part of the record, the agency must transmit to the Administrator and serve on the parties the corrected or additional part of the record by one of the methods prescribed in this rule.

(c) The Administrator will notify the parties when the Administrator determines that the record is settled.

(9) Modified Record After Court Grants Leave to Present Additional Evidence

If the appellate court grants a party's motion under [ORS 183.482\(5\)](#) for leave to present additional evidence, following proceedings before the agency, the agency must transmit to the Administrator and serve on the parties any additional record by one of the methods prescribed in this rule.

(10) Disposition of Agency Record upon Issuance of Appellate Judgment

(a) If the agency transmitted the record to the Administrator in paper form, unless the court directs otherwise, when the Administrator issues the appellate judgment, the Administrator will return the record to the agency.

(b) If agency transmitted the record to the Administrator by electronic means, the Administrator issues the appellate judgment, the Administrator will not return the agency record to the agency. The Administrator will retain the electronic record for at least six months; thereafter, unless the court grants a party's request to retain the agency record longer, the Administrator may delete the record from computer storage.

¹ See the definition of "optical disk" at [ORAP 1.15\(3\)\(s\)](#).

² The Instructions are published at:
<<https://www.courts.oregon.gov/courts/appellate/rules/Pages/orap.aspx>>.

³ As provided in the SFTP Instructions, the agency will email notice to any party being served with the record by SFTP when the record is ready to be downloaded. The Instructions describe how to access the SFTP website and download the record.

* "Document" as used here means a document in the agency file, an exhibit, or any part of the transcript of oral proceedings that the administrative law judge, agency, or court has ordered to be treated as confidential or sealed.

Rule 5.20
REFERENCE TO EVIDENCE
AND EXHIBITS; CITATION OF AUTHORITIES

(1) Briefs, ~~when in~~ referring to the record, shall make appropriate reference to pages and volumes of the transcript or narrative statement; ~~or if in the case of~~ an audio record, to the tape or recording number and official cue or numerical counter number; ~~or, if in the case of~~ an exhibit, to its identification number or letter.

~~—(2)—~~ If the precise location on the audio record cannot be determined, the brief may it-
is permissible to indicate between which cue numbers the evidence is to be found.

(~~2~~3) In referring to any part of the record transmitted to the Administrator by optical disk or by Secure File Transfer Protocol (SFTP) in Portable Document Form (PDF), the brief ~~should cite court prefers citation to~~ the page number of the PDF file. In any judicial review in which the agency has served a self-represented party with the record in ~~conventional~~ paper form, a party citing to the record may either:

(a) Include in the party's brief parallel citations to the record in ~~conventional~~ paper form; or

(b) On request of any self-represented party, provide in writing to that party parallel citations to the record in ~~conventional~~ paper form.

(~~3~~4) The following abbreviations may be used:

"P Tr" for pretrial transcript;

"Tr" for transcript;

"Nar St" for narrative statement;

"ER" for Excerpt;

"App" for Appendix;

"AR Tape No. ____, Cue No. ____" for audio record;

"PAR" for pretrial audio record;

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"PDF" for PDF of agency record filed by electronic means with the Administrator;

"TCF" for trial court file;

"Rec" for record in judicial review proceedings only;

"Ex" for exhibit.

Other abbreviations may be used if explained.

(45) Guidelines for style and conventions in citation of authorities may be found in the Oregon Appellate Courts Style Manual.¹

(56) Cases affirmed without opinion by the Court of Appeals should not be cited as authority. Cases decided by nonprecedential memorandum opinion may only be cited as provided in ORAP 10.30(1)(d).

¹ Copies of the Oregon Appellate Courts Style Manual may be obtained from the Publications Section of the Office of the State Court Administrator, 1163 State Street, Salem, Oregon 97301-2563; (503) 986-5656; the Style Manual also is published on the Judicial Department's website at: <<https://www.courts.oregon.gov/publications/Pages/default.aspx>>.

Rule 13.05 COSTS AND DISBURSEMENTS

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(6) (a) (i) Except as provided in paragraph (ii) of this subsection, whether a brief is printed or reproduced by other methods, the party allowed costs is entitled to recover 10 cents per page for the number of briefs required to be filed or actually filed, whichever is less, plus one copy for each party served and one copy for each party on whose behalf the brief was filed.

(ii) If a party filed a brief using the eFiling system, the party allowed costs is entitled to recover the amount of the transaction charge and any document recovery charge* incurred by that party for electronically filing the brief, as provided in subsection (b) of this section. The party allowed costs is not entitled to recover for the service copy of any brief served on a party via the eFiling system, but is entitled to recover for one copy for each party served in paper form conventionally.

Proposal # 1 -- ORAP 1.15(3)(k), 1.32, 1.35, 1.45, 4.20, 5.20, 13.05(6), 16.03, 16.05, 16.10, 16.15, 16.20, 16.25, 16.30, 16.40, 16.45, and 16.60 -- Temporary Rules re: ACMS

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16. FILING AND SERVICE BY ELECTRONIC MEANS

Rule 16.03 APPLICABILITY

~~This chapter applies. These rules apply~~ to electronic filing and service in the Oregon appellate courts. ~~Court of Appeals and the Oregon Supreme Court. At this time, only members of the Oregon State Bar are eligible to file documents electronically.~~

Rule 16.05 DEFINITIONS

For purposes of this chapter:

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

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

(3) "Electronic filing system" or "eFiling system" means the system provided by the Oregon Judicial Department for a party or participant to electronically submit a document for filing in the appellate courts via the internet. The system may be accessed through at the Judicial Department's website.¹

~~(4) "Electronic payment system" means the system provided by the Oregon Judicial Department for paying filing fees and associated charges electronically in the appellate court.~~

~~(45)~~ An "eFiler" means a person registered with the eFiling system who submits a document for electronic filing with the appellate court.

~~(56)~~ "Electronic service" or "eService" means the process for a user of the eFiling system to accomplish service via the electronic mail function of that the appellate court eFiling system.

~~(67)~~ "Hyperlink" means a navigational link in the electronic version of a document to

Proposal # 1 -- ORAP 1.15(3)(k), 1.32, 1.35, 1.45, 4.20, 5.20, 13.05(6), 16.03, 16.05, 16.10, 16.15, 16.20, 16.25, 16.30, 16.40, 16.45, and 16.60 -- Temporary Rules re: ACMS

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another section of the same document or to another electronic document accessible via the internet.

(78) "Initiating document" means any document that initiates a case, including but not limited to a notice of appeal; a petition for review;² a petition for judicial review; a petition for a writ of mandamus, habeas corpus or *quo warranto*; and a recommendation for discipline from the Oregon State Bar or the Commission on Judicial Fitness and Disability.

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

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

¹ <<https://courts.oregon.gov/services/online/Pages/appellate-efile.aspx>>

² [ORAP 1.35](#) defines "initiating document" for purposes of ~~paper conventional~~ filing. For those purposes, the term does *not* include a petition for review under [ORAP 9.05](#). [ORAP 1.35\(1\)\(b\)\(i\)](#). [ORAP 16.05](#) defines "initiating document" for purposes of eFiling and eService. For those purposes, the term *does* include a petition for review under [ORAP 9.05](#).

Rule 16.10 eFILERS

(1) Authorized eFilers

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

(b) To become an eFiler, ~~a user must create an account with the eFiling system. An attorney must complete a registration form to request a username and must complete a training program, either online or in person, regarding the appellate court eFiling system. Links to the registration form and to the online training program are available at Appellate eFiling. An attorney who has been assigned a username, has created a password, and has completed training may eFile documents with the appellate courts.~~

(2) Conditions of Electronic Filing

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

(i) review ~~the "How to eFile" document available on the appellate court's eFiling website at:~~

Proposal # 1 -- ORAP 1.15(3)(k), 1.32, 1.35, 1.45, 4.20, 5.20, 13.05(6), 16.03, 16.05, 16.10, 16.15, 16.20, 16.25, 16.30, 16.40, 16.45, and 16.60 -- Temporary Rules re: ACMS

~~< <https://www.courts.oregon.gov/services/online/Pages/appellate-efile.aspx>>; the technical requirements for electronic filing at [Appellate eFiling FAQs](#);~~

(ii) register for access to the eFiling system;

(iii) comply with the electronic filing terms and conditions when using the eFiling system;

(iv) furnish required information for case processing; and

(v) update their account information in the eFiling system if any of that information changes, including but not limited to, any change in the user's email address. advise the Oregon Judicial Department Enterprise Technology Services Division of any change in the eFiler's email address.⁺

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

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

~~⁺Use the form located on the Judicial Department's website, at the following address: <https://www.courts.oregon.gov/services/online/Pages/appellate-eFile-support.aspx>.~~

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

Rule 16.15

FORMAT OF DOCUMENTS TO BE FILED ELECTRONICALLY

(1) Any document filed via the eFiling system must be in a Portable Document Format (PDF) or Portable Document Format/A (PDF/A) that is compatible with the eFiling system requirements and that does not exceed 25 megabytes. An eFiler should break down a document that exceeds the size limit into as few smaller separate documents as possible, which the filer may upload as supporting documents under subsection (5) of this rule.⁺ Unless the PDF document is a pro se supplemental brief filed under ORAP 5.92 or a supplemental pro se petition for review of a Court of Appeals decision, the document shall allow text searching and shall

Proposal # 1 -- ORAP 1.15(3)(k), 1.32, 1.35, 1.45, 4.20, 5.20, 13.05(6), 16.03, 16.05, 16.10, 16.15, 16.20, 16.25, 16.30, 16.40, 16.45, and 16.60 -- Temporary Rules re: ACMS

allow copying and pasting text into another document.

(2) A submitted document, when viewed in electronic format and when printed, shall comply, to the extent practicable, with the formatting requirements of any applicable Oregon Rule of Appellate Procedure. Except as provided in [ORAP 16.40](#), a document submitted for electronic filing need not contain a physical signature.

(3) An eFiler who submits a document that does not comply with an applicable Oregon Rule of Appellate Procedure will receive from the court an acknowledgement of the electronic filing and a notice of the deficiency or deficiencies to be corrected.³¹

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

(5) Except as provided in subsection (1) and paragraphs (5)(a) through (c) of this rule, to the extent practicable, an electronic filing must be submitted as a unified single PDF file, rather than as separate eFiled documents or as a principal eFiled document with additional supporting documents attached through the eFiling system.³²

(a) The following documents must be submitted as supporting documents through the eFiling system:

(i) One or more parts of an eFiled document that exceeds the size limit set out in subsection (1) of this rule, as a supporting document to the initial eFiled document.

(ii) A memorandum of law accompanying a petition in a mandamus, habeas corpus, or quo warranto proceeding in the Supreme Court under [ORAP 11.05](#) or [ORAP 11.20](#), as a supporting document to the eFiled petition.

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

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

this paragraph, the eFiler must include the following comments:

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

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

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

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

¹ ~~See Appellate eFiling FAQ for more information about the technical requirements of eFiling: <<https://www.courts.oregon.gov/services/online/Pages/appellate-faq.aspx>>.~~

² See [ORAP 1.20](#).

³² Examples of content that should be included as part of a unified single PDF file include: (1) notice of appeal, judgment being appealed, and certificate of service; (2) petition for judicial review, agency order as to which review is sought, and certificate of service; (3) petition for reconsideration, underlying decision as to which reconsideration is sought, and certificate of service; (4) petition for review, Court of Appeals decision as to which review is sought, and certificate of service; (5) motion, affidavit or declaration (if any), and certificate of service; (6) Supreme Court mandamus or habeas corpus petition, copy of order or written decision, and certificate of service; and (7) Supreme Court memorandum in support of a mandamus or habeas corpus petition, excerpt of record, and certificate of service.

Rule 16.20 FILING FEES AND eFILING CHARGES

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

(2) An eFiler shall pay any required filing fees or eFiling charges in effect at the time of the electronic filing as part of submitting an electronic filing, ~~by using the electronic payment system~~, unless otherwise directed by the court. Charges for electronic filing may be recovered in the manner provided by [ORAP 13.05](#).

Proposal # 1 -- ORAP 1.15(3)(k), 1.32, 1.35, 1.45, 4.20, 5.20, 13.05(6), 16.03, 16.05, 16.10, 16.15, 16.20, 16.25, 16.30, 16.40, 16.45, and 16.60 -- Temporary Rules re: ACMS

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

¹ As of the publication date of these rules, no such charge has been imposed.

Rule 16.25

ELECTRONIC FILING AND ELECTRONIC FILING DEADLINES

(1) Except as provided in subsection (4), the filing deadline for any document filed electronically is 11:59:59 p.m. in the time zone in which the court is located on the date by which the document must be filed.

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

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

(b) When the court accepts the document for filing, the eFiling system will affix to the document the time of day, the day of the month, the month, and the year that the eFiling system received the document. The date and time of filing entered in the register relate back to the date and time that the eFiling system received the document. The eFiling system will send an email that includes the date and time of acceptance to the eFiler's email address and to any other email address provided by the eFiler. If the document was electronically served by the eFiling system pursuant to [ORAP 16.45](#),¹ the date of service will also relate back to the date that the eFiling system received the document.

(4) (a) As used in this subsection, "temporary unavailability" means that the eFiling system is temporarily unavailable or that an error in the transmission of the document or other technical problem prevents the eFiling system from receiving the document. A "temporary unavailability" does not include a problem with the eFiler's equipment or software, or other problem within the eFiler's control.

(b) When a party is unable to use the eFiling system because of a temporary unavailability, the party may file and serve the document as provided in subparagraph (i) or (ii) of this paragraph.

(i) The party may ~~conventionally~~ file and serve the document by paper filing and paper service. If the party ~~does so conventionally files and serves the document~~ by the end of the next business day following the cessation of the temporary unavailability, together with satisfactory proof of the temporary unavailability, the filing and service date relates back to the date the party attempted to eFile the document.

(ii) ~~When the system becomes available, Upon cessation of the temporary unavailability,~~ the party may use the eFiling system to file and, except as provided in ORAP 16.45(3), serve the document. If the party files and serves the document using the eFiling system by 11:59:59 p.m. of the next business day following the day the system becomes available ~~cessation of the temporary unavailability~~ and submits satisfactory proof of the temporary unavailability, the filing and service date relates back to the date the party attempted to eFile the document.

(c) Paragraph (b) of this subsection does not apply to extend any jurisdictional time period imposed by statute, including those related to the filing and service of a notice of appeal, a petition for judicial review, or any other initiating document. A party's circumstances may require the party to use paper filing and paper service for conventionally file and serve an initiating document within the time period imposed by statute.

(d) "Satisfactory proof of the temporary unavailability" means a written description of the temporary unavailability, together with any supporting documentation, satisfactory to the court.

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

¹ As provided in [ORAP 16.45\(3\)](#), the eFiling system cannot electronically serve some documents.

Rule 16.30

PAPER CONVENTIONAL FILING REQUIREMENTS

(1) A filer must file the ~~The~~ following documents by paper filing ~~must be conventionally filed~~:

Proposal # 1 -- ORAP 1.15(3)(k), 1.32, 1.35, 1.45, 4.20, 5.20, 13.05(6), 16.03, 16.05, 16.10, 16.15, 16.20, 16.25, 16.30, 16.40, 16.45, and 16.60 -- Temporary Rules re: ACMS

(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 ~~by paper filing conventionally.~~

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

(a) The ~~paper 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) ~~A filer may file the~~ The following documents ~~by either paper filing or eFiling: 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 ~~filed by paper filing conventionally filed.~~

¹ [ORS 19.260](#) 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.

Rule 16.40 ELECTRONIC SIGNATURES

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

Proposal # 1 -- ORAP 1.15(3)(k), 1.32, 1.35, 1.45, 4.20, 5.20, 13.05(6), 16.03, 16.05, 16.10, 16.15, 16.20, 16.25, 16.30, 16.40, 16.45, and 16.60 -- Temporary Rules re: ACMS

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

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

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

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

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

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

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

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

¹ <<https://www.courts.oregon.gov/services/online/pages/appellate-efile.aspx>>

Rule 16.45 ELECTRONIC SERVICE

(1) Registration as an eFiler with the eFiling system constitutes consent to receive service via the electronic service mail-function of the eFiling system.

Proposal # 1 -- ORAP 1.15(3)(k), 1.32, 1.35, 1.45, 4.20, 5.20, 13.05(6), 16.03, 16.05, 16.10, 16.15, 16.20, 16.25, 16.30, 16.40, 16.45, and 16.60 -- Temporary Rules re: ACMS

(2) (a) Except as provided in subsection (3), a party eFiling a document ~~with the appellate court~~ may use the eFiling system's eService function to accomplish service of that document on any other party's attorney or on a self-represented party, if that party's attorney or the self-represented party is a registered eFiler. ~~by using the eService function of the eFiling system.~~ The eFiling system will generate an email to the attorney or self-represented party being eServed that includes a link to the document that was eFiled. To access the eFiled document, the attorney or self-represented party who has been eServed must log in to the eFiling system.

(b) eService is effective under this rule when the eFiler has received a confirmation email stating that the eFiled document has been received by the eFiling system.

(3) A party eFiling a document must accomplish service via paper service or other form of service permitted by ORCP 9, the conventional manner, as provided by ORAP 1.35 and other applicable rules and statutes, if:

(a) The document to be served:

(i) initiates a case in the Court of Appeals;

(ii) initiates a case in the Supreme Court under that court's original jurisdiction;

(iii) is a first motion for extension of time to file a petition for review in the Supreme Court; or

(iv) if no motion for extension of time has been filed, is a petition for review in the Supreme Court;

(b) The party to be served is self-represented and is not a registered eFiler; or

(c) The attorney to be served is not a member of the Oregon State Bar and is not a registered eFiler, or is a member of the Oregon State Bar but has obtained a waiver to the mandatory eFiling requirement under ORAP 16.60.

(4) All eFiled documents must be accompanied by a proof of service under ORAP 1.35(2)(e). The proof of service must certify service on all parties regardless of the means by which service was accomplished, including eService. The proof of service must state that service was accomplished at the person's email address as recorded on the date of service in the eFiling system, and need not include that person's email address or mailing address.

(5) If an eFiled document is not eServed by the eFiling system because of an error in the transmission of the document or other technical problem experienced by the eFiler, the court

Proposal # 1 -- ORAP 1.15(3)(k), 1.32, 1.35, 1.45, 4.20, 5.20, 13.05(6), 16.03, 16.05, 16.10, 16.15, 16.20, 16.25, 16.30, 16.40, 16.45, and 16.60 -- Temporary Rules re: ACMS

may, upon satisfactory proof, permit the service date of the document to relate back to the date that the eFiler first attempted to eServe the document. A party must show satisfactory proof by filing and serving an accompanying letter explaining the circumstances, together with any supporting documentation.

Rule 16.60
MANDATORY ELECTRONIC FILING

(1) An active member of the Oregon State Bar must file a document using the eFiling system, except:

(a) When a document must or may be filed by paper filing as provided in conventionally filed under ORAP 16.30; or

(b) When the eFiling system is temporarily unavailable as provided in ORAP 16.25.

(2) An active member of the Oregon State Bar who is required ~~under subsection (1) of this rule~~ to file a document using the eFiling system under subsection (1) of this rule, may obtain a waiver of ~~that the~~ requirement as follows:

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

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

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

(b) A request or a motion must include an explanation describing good cause for the waiver. The request or motion may be filed by paper filing. conventionally.

(c) The Administrator is authorized to approve or deny a request filed under subparagraph (a)(i) of this subsection.

(d) If the ~~court or the~~ Administrator approves a request, or if the court approves a motion, as described in subsection (a) of this rule, ~~under that subsection~~, the person must

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

(ii) include in the caption of all documents filed by paper filing during

Proposal # 1 -- ORAP 1.15(3)(k), 1.32, 1.35, 1.45, 4.20, 5.20, 13.05(6), 16.03, 16.05, 16.10, 16.15, 16.20, 16.25, 16.30, 16.40, 16.45, and 16.60 -- Temporary Rules re: ACMS

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

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

(3) The Administrator is authorized to suspend subsection (1) of this rule when the Administrator becomes aware of a temporary unavailability as defined in [ORAP 16.25\(4\)\(a\)](#) and, in the Administrator's judgment, the temporary unavailability is likely to prevent electronic filing for a substantial period of time under the circumstances.

(a) If the Administrator suspends subsection (1) of this rule, then the Administrator will strive to provide 24-hour advance notice of the suspension to registered eFilers via email and to the public via notice on the Oregon Judicial Department's website. If circumstances make it impractical to provide 24 hours' notice, the Administrator will provide as much advance notice as is practical under the circumstances.

(b) If the Administrator suspends subsection (1) of this rule under this subsection, then an active member of the Oregon State Bar may file the document as provided in [ORAP 16.25\(4\)](#).

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

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

(b) Refuse to accept the document for filing.

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

(d) Refer the filing to the court for consideration of sanctions under [ORAP 1.20\(2\)](#).

ORAP COMMITTEE 2024
February 22 Materials

AMENDING RULE(S): Proposal # 2 -- ORAP 1.35(1)(b)(iii) -- Clarify Rules re Filing and Service and Manner of Filing

PROPOSER: Lisa Norris-Lampe, Appellate Legal Counsel, Supreme Court; Theresa Kidd, Appellate Commissioner, Court of Appeals; SP Armitage, Staff Attorney, Supreme Court

EXPLANATION:

The Oregon Legislature has amended ORS 19.260 regarding the classes of service that will qualify a document to be filed on mailing, rather than delivery. Or Laws 2023, ch 14, § 1. The existing Rule 1.35(1)(b)(iii) is not only outdated, it's also particularly difficult to read (to the extent that the drafting of this proposal revealed that experienced appellate attorneys had differences of opinion regarding (1)(b)(iii)'s meaning).

In the view of at least one of the proposers, the conditions found in the statute are too complicated to be summarized in the rule in a way that is both easy to read and accurate. Moreover, including those conditions in the rule creates a serious risk of misleading litigants regarding a jurisdictional requirement, especially should the legislature again amend ORS 19.260. Accordingly, the revision simplifies and consolidates the options and directs readers to the appropriate statute.

If the Committee believes it is important to for the Oregon Rules of Appellate Procedure to include the statutory conditions, then a footnote has been added quoting the statute with a note that that is the text as of January 1, 2024.

RULE AS AMENDED:

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.

Proposal # 2 -- ORAP 1.35(1)(b)(iii) -- Clarify Rules re Filing and Service and Manner of

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(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 eFiling system.

(B) Except as otherwise provided in ORAP 16.30 or 16.60(2), any other person may file any document by either the eFiling system or by paper filing. Paper filing should be made either 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, 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) "Initiating document" means any document that initiates a case, including but not limited to a notice of appeal; a petition for judicial review; a petition for a writ of mandamus, habeas corpus or quo warranto; and a recommendation for discipline from the Oregon State Bar or the Commission on Judicial Fitness and Disability. As used in this rule, "initiating document" does not include a petition for review under [ORAP 9.05²](#) or a motion for extension of the time to file a petition for review under [ORAP 9.05](#).

(ii) Use of the appellate eFiling system to deliver and file documents with either appellate court is subject to Chapter 16 of these rules.

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

(A) A person may deliver an initiating document for filing via the U.S. Postal Service or via commercial delivery service. Filing will only be, and delivery is complete on the date of mailing or dispatch if the document is mailed or dispatched ~~for delivery in~~ accordance with [ORS 19.260\(1\)\(a\)](#). For filing to be complete on the date of mailing or dispatch, the person may also be required to provide proof to the Administrator as prescribed by ORS 19.260(1)(b).³ ~~If the Administrator receives the 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 by 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 an 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 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.~~

(~~B~~C) A person involuntarily confined in a state or local government facility may deliver an 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.

(~~C~~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) Paper Filing Not Using U.S. Postal Service or Commercial Delivery Service

If a person does not deliver a document for filing via the appellate 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.³⁴ 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,⁴⁵ 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

authorized users of the eFiling system and only as provided in [ORAP 16.45](#).

(iii) Service by email or facsimile communication is permitted only as provided in ORCP 9 F or 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 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 was 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 for the county in which the judgment or appealable order was entered, addressed to "transcript coordinator."

(iii) An authorized user of the trial court electronic filing system may serve a copy of a notice of appeal on the trial court administrator and the transcript coordinator by using the "Courtesy Copies" email function of that system. The email address for each judicial district's trial court administrator and transcript coordinator are available on the judicial district's website.

¹ [ORAP 1.35](#) defines "initiating document" for purposes of paper filing. For those purposes, the term does *not* include a petition for review under [ORAP 9.05](#). [ORAP 16.05](#) defines "initiating document" for purposes of eFiling and eService. For those purposes, the term *does* include a

petition for review under [ORAP 9.05](#). [ORAP 16.05\(8\)](#).

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 As of January 1, 2024, ORS 19.260(1) provides:

"(1)(a) Filing a notice of appeal in the Court of Appeals or the Supreme Court may be accomplished by mail or delivery. Regardless of the date of actual receipt by the court to which the appeal is taken, the date of filing the notice is the date of mailing or dispatch for delivery, if the notice is:

"(A) Mailed by any class of mail from the United States Postal Service and the party filing the notice has proof from the United States Postal Service of the mailing date; or

"(B) Mailed or dispatched via a commercial delivery service by a class of delivery calculated to achieve delivery within three calendar days, and the party filing the notice has proof from the commercial delivery service of the mailing or dispatch date.

"(b)(A) Proof of the date of mailing or dispatch under this subsection must be certified by the party filing the notice and filed thereafter with the court to which the appeal is taken. Any record of mailing or dispatch from the United States Postal Service or the commercial delivery service showing the date that the party initiated mailing or dispatch is sufficient proof of the date of mailing or dispatch. If the notice is received by the court on or before the date by which the notice is required to be filed, the party filing the notice is not required to file proof of mailing or dispatch.

"(B) If the notice is mailed via the United States Postal Service first class mail, the date shown on the postmark affixed by the United States Postal Service constitutes sufficient proof of mailing or dispatch under this subsection."

⁴³ See Chief Justice Order No. 18-024 (order adopted pursuant to [ORS 21.682](#) prescribing standards and practices for waiver or deferral of court fees and costs) (available at <https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll10/id/263/rec/1>).

⁵⁴ See, e.g., ORS 183.482(2), relating to cases arising under the Administrative Procedures Act, 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.

ORAP COMMITTEE 2024
February 22 Materials

AMENDING RULE(S): Proposal # 3 -- ORAP 2.05 -- Clarify What Date on Register Constitutes Entry for Purposes of Appeal

PROPOSER: Shenoa Payne (suggested revision prepared by SP Armitage)

EXPLANATION:

[From Ms. Payne's email:]

ORAP 2.05 provides that a notice of appeal shall be filed and served "within the time allowed by ORS 19.255, ORS 138.071, or other applicable statute."

ORS 19.255(1) and ORS 138.071 both provide that a notice of appeal must be filed within 30 days after the judgment appealed from "is entered in the register."

There recently was some discussion on the OSB appellate listserv regarding how to determine the date that judgment "is entered in the register" as there is both an entry date and a creation date. I had always understood that the "creation date" was considered the date of entry in the register (this date is the later date of the two dates). This apparently was confirmed to be correct at the recent OSB Appellate CLE. However, based on the discussion on the listserv, it was clear that there is confusion surrounding this issue based on how OECI enters its dates.

I think it could be helpful to all practitioners to have an ORAP or footnote in ORAP 2.05 noting that the Oregon appellate courts consider the "creation date" in OECI to be the date that a judgment is "entered in the register" for purposes of determining the time to file a notice of appeal.

RULE AS AMENDED:

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-

Proposal # 3 -- ORAP 2.05 -- Clarify What Date on Register Constitutes Entry for Purposes of Appeal

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 and on all parties identified in the notice of appeal as adverse parties.

(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.

* In the case register as displayed on the Oregon eCourt Case Information (OECI) website, the date that an order or judgment was entered in the register is the "creation" date, not the "signed" date.

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 4 to subparagraph (10)(b)(ii) of this rule.

⁷ See footnote 5 to subparagraph (10)(c)(i) of this rule.

⁸ See [ORAP 1.35\(2\)\(e\)](#).

See ORS 19.240(3) and ORS 19.250; 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 contest, see ORS 138.085.

See [Appendix 2.05](#) for a form of notice of appeal.

**ORAP COMMITTEE 2024
February 22 Meeting**

AMENDING RULE(S): Proposal # 4 -- ORAP 4.35 -- Clarify Rule re Agency
Withdrawal of Orders

PROPOSER: Elaine E. Bensavage, Oregon Supreme Court

EXPLANATION:

[Paraphrased from Ms. Bensavage's email:]

The existing rule is confusing in a number of respects. The purpose of the changes is to better organize the material and make it more reader-friendly and comprehensible.

RULE AS AMENDED:

**Rule 4.35
AGENCY WITHDRAWAL OF ORDERS**

(1) An agency may withdraw an order for the purpose of reconsideration, as follows:

(a) If an agency withdraws an order on judicial review pursuant to ORS 183.482(6), ~~withdraws an order for the purpose of reconsideration~~, it shall file with the Administrator a notice of the withdrawal. The notice shall include a statement of reasons why the order is being reconsidered and the date the agency expects to submit a new order to the court after reconsideration. An order on reconsideration shall be filed within 60 days after the filing of the notice of withdrawal or within such other time as the court may allow.

(b) If an agency that is not subject to ORS 183.482(6) withdraws an order on judicial review ~~for the purpose of reconsideration~~, it shall file with the Administrator a copy of its order or other decision withdrawing that order, accompanied by a statement of reasons why the order is being withdrawn and a statement whether the agency expects to submit a new order to the court following the withdrawal and, if so, when.

(2) The filing of a notice under subsection (1) of this rule shall suspend proceedings on the petition for judicial review until an order on reconsideration is filed, or the time _ designated therefor expires, unless otherwise ordered by the court.

(3) ~~Regardless whether~~When an order first has been withdrawn for the purpose of reconsideration under either paragraphs (1)(a) or (1)(b) of this rule, if ~~an~~the agency issues an order on reconsideration, the Attorney General shall file a copy of the order on reconsideration with the Administrator. The order shall be filed within seven days after the agency issues the order on reconsideration.

(4) (a) ~~(i) — Except as provided in subparagraph (4)(a)(ii) of this rule, after the filing petitioner on judicial review seeks judicial review of an agency's order on reconsideration, if the petitioner desires judicial review: _____~~

(i) After the filing of the order on reconsideration, the petitioner shall file an amended petition for judicial review or notice of intent to proceed with judicial review, within a period equal to that allowed for filing an original petition.¹ No filing fee is required for an amended petition.

~~(ii) If~~And the ~~petitioner on judicial review of order is~~ an order of the Board of Parole and Post-Prison Supervision ~~desires to continue the judicial review after the Board issues its order on reconsideration~~, the petitioner shall file a notice of intent to proceed with judicial review, within the period equal to that allowed for filing an original petition, unless the court allows additional time.²

(b) A person other than the petitioner on judicial review who is dissatisfied with the order on reconsideration and who does not file under paragraph (4)(a) of this rule may file a petition for judicial review of the order on reconsideration in accordance with ~~statute~~the applicable statutes and these rules.

(c) If ~~no~~an amended petition ~~or for judicial review or a~~ notice of intent to proceed with judicial review is not timely filed, the judicial review proceeding in the Court of Appeals will be dismissed.

(5) If the agency has considered any material beyond the present record, the agency shall submit an amended record to the Administrator within 14 days after the filing of a petition for judicial review, amended petition for judicial review, or notice of intent to proceed with judicial review. The amended record on review shall be prepared pursuant to ORAP 4.20.

(6) If the petitioner filed an opening brief before the withdrawal of ~~the~~an order for reconsideration, in addition to filing an amended petition for judicial review or notice of intent to proceed with judicial review as required by paragraph (4)(a) of this rule, the petitioner may give notice to the Administrator of the petitioner's intent to proceed on the original opening brief. ~~If, or the petitioner's intent to file a supplemental brief instead. An opening brief, if~~ the petitioner had not filed an opening brief ~~or desires to file a supplemental brief, the petitioner's opening before the withdrawal of the order for reconsideration, or a~~ supplemental brief, shall be filed 28 days after the date the amended petition for judicial review or notice of intent to proceed

with judicial review was filed, or the date the agency submitted the amended record to the Administrator, whichever is later. A respondent's answering brief, if any, shall be filed within 28 days after the filing of the petitioner's opening or supplemental brief, or notice that the petitioner will proceed on the original brief.

¹ See [ORS 183.482\(6\)](#).

² See [ORS 144.335\(7\)](#).

ORAP COMMITTEE 2024
February 22 Materials

AMENDING RULE(S): Proposal # 10 -- ORAP 6.25(1), ORAP 9.05, Appendix 9.05 -- Identify Nonprecedential Opinions in Petitions for Review

PROPOSER: Elaine Bensavage, Supreme Court; Alice Meyer, Appellate Court Records Section.

EXPLANATION:

A number of locations in the ORAP list the various possible types of dispositions by the Court of Appeals. The proposed amendments would add "nonprecedential memorandum opinion" to those lists.

Of particular note: ORAP 9.05(3)(a)(iv) requires petitions for review to identify the nature of the disposition in the Court of Appeals. The present list does not expressly address nonprecedential memorandum opinions, and in practice many petitions for review do not note that the Court of Appeals's decision was nonprecedential.

(These amendments are related to Proposal # 6 making permanent the temporary amendments regarding nonprecedential memorandum opinions, and Proposal # 12 requiring citation to Court of Appeals decisions on petitions for review.)

RULE AS AMENDED:

[None provided. Suggested revisions by SP Armitage:]

Rule 6.25
RECONSIDERATION BY COURT OF APPEALS

(1) As used in this rule, "decision" means an opinion, per curiam opinion, nonprecedential memorandum opinion, affirmance without opinion, and an order ruling on a motion or an own motion matter that disposes of the appeal. A party seeking reconsideration of a decision of the Court of Appeals shall file a petition for reconsideration. A petition for reconsideration shall be based on one or more of these contentions:

* * * * *

Proposal # 10 -- ORAP 6.25(1), ORAP 9.05, Appendix 9.05 -- Identify Nonprecedential Opinions in Petitions for Review

Rule 9.05
PETITION FOR SUPREME COURT REVIEW OF
COURT OF APPEALS DECISION

(1) Reviewable Decisions

As used in this rule, "decision" means a decision of the Court of Appeals in the form of an opinion, per curiam opinion, nonprecedential memorandum opinion, or affirmance without opinion, or an order ruling on a motion, own motion matter, petition for attorney fees, or statement of costs and disbursements, including an order of the Chief Judge or Motions Department on reconsideration of a ruling of the appellate commissioner under ORAP 7.55(4)(c) or an order of the appellate commissioner if it is designated a "summary determination," as specified in ORAP 7.55(4)(d). Except as provided in ORAP 7.55(4)(d), a decision of the appellate commissioner may be challenged only by a petition or motion for reconsideration in the Court of Appeals as provided by ORAP 6.25.

* * * * *

(3) Form and Service of Petition for Review

(a) The petition shall be in the form of a brief prepared in conformity with ORAP 5.05 and ORAP 5.35. For purposes of ORAP 5.05, the petition must not exceed 5,000 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) 15 pages. The cover of the petition shall:

* * * * *

(iv) Identify the means of disposition of the case by the Court of Appeals, including the following information:

(A) Whether the challenged decision was an opinion, nonprecedential opinion, per curiam opinion, affirmance without opinion, or order;

(B) The members of the court who entered the decision;

(C) The author of any opinion, and any judges separately concurring or dissenting.²

~~(A) If by opinion, the author of the challenged opinion and the other members of the court who concurred in or dissented from the court's decision;~~

~~_____ (B) _____ If by per curiam opinion, affirmance without opinion, or by order, the members of the court who decided the case.²~~

* * * * *

APPENDIX 9.05

Illustration for ORAP 9.05

[The case title of a petition for review is to appear as shown on the appellate decision in substantially the following form:]

IN THE SUPREME COURT
OF THE STATE OF OREGON

_____)	
Respondent,)	
(or Petitioner) on Review,)	_____ County Circuit
	Court No. _____
v.)	
_____)	CA A _____
Petitioner)	
(or Respondent) on Review.)	

**PETITION FOR REVIEW OF
[NAME OF PARTY]**

Petition for review of the decision of the Court of Appeals on appeal from a judgment of the Circuit Court for _____ County, Honorable _____, Judge (or an order of [name of agency]).

Opinion Filed: [date]

~~Decision by [Opinion / Nonprecedential Memorandum Opinion / Per Curiam Opinion / Affirmance Without Opinion / Order]~~

~~Panel: _____
Authoring Judge: _____
Separate Opinions by: _____~~

~~[If the court decided the case by opinion indicating its author]~~

~~Author of Opinion: _____
Concurring Judge(s): _____~~

Dissenting Judge(s): _____

[or]

~~[If the court affirmed without opinion or
decided the case by per curiam opinion]~~

Before _____, Presiding Judge

Attorney(s) for Petitioner on Review [if more than one petitioner on review, identify which;
include separate listing for each petitioner on review represented by a different attorney]
[Mailing address, bar number, telephone number, and email address]

[or]

_____ [name of self-represented petitioner on review; include
separate listing for each self-represented petitioner on review]
[Mailing address and telephone number]

Attorney(s) for Respondent on Review [if more than one respondent on review, identify which;
include separate listing for each respondent on review represented by a different attorney]
[Mailing address, bar number, telephone number, and email address]

[or]

_____ [name of self-represented respondent on review; include
separate listing for each self-represented respondent on review]
[Mailing address and telephone number]

PETITIONER ON REVIEW
[INTENDS/DOES NOT INTEND]
TO FILE A BRIEF ON THE MERITS

ORAP COMMITTEE 2024
February 22 Materials

AMENDING RULE(S): Proposal # 12 -- ORAP 9.05(3), ORAP 9.17(2), Appendix 9.05 -- Include Court of Appeals' Opinion Citation on Covers of Supreme Court Briefs and Petitions for Review

PROPOSER: Lisa Norris-Lampe, Appellate Legal Counsel, Supreme Court

EXPLANATION:

[From Ms. Norris-Lampe's memos, edited by SP Armitage to consolidate into single proposal:]

Issue: Before the appellate courts upgraded their case management system in late 2023, the system internally provided "citation" information on Court of Appeals cases, which Supreme Court Records Office and Judicial Assistant staff utilized, among things, to prepare wording in certain draft orders and also to prepare title pages for opinions in cases on review. The upgraded case management system, however, contains no internal "citation" information, and so Court of Appeals citation information is not as readily available to non-legally trained staff as before.

Proposed solution: Amend ORAP 9.05(3)(a)[, Appendix 9.05, and ORAP 9.17(2)] to require the cover of a petition for review [and the cover of a brief] to include the Court of Appeals citation information, for any reported Court of Appeals decision that is the subject of the petition for review.

RULE AS AMENDED:

Rule 9.05
PETITION FOR SUPREME COURT REVIEW OF
COURT OF APPEALS DECISION

* * * * *

(3) Form and Service of Petition for Review

(a) The petition shall be in the form of a brief prepared in conformity with [ORAP 5.05](#) and [ORAP 5.35](#). For purposes of [ORAP 5.05](#), the petition must not exceed 5,000 words or (if the certification under [ORAP 5.05\(2\)\(d\)](#) certifies that the preparer does

Proposal # 12 -- ORAP 9.05(3), ORAP 9.17(2), Appendix 9.05 -- Include Court of Appeals' Opinion Citation on Covers of Supreme Court Briefs and Petitions for Review

not have access to a word-processing system that provides a word count) 15 pages. The cover of the petition shall:

(i) Identify which party is the petitioner on review, including the name of the specific party or parties on whose behalf the petition is filed, if there are multiple parties on the same side in the case.

(ii) Identify which party is the respondent on review.

(iii) Identify the date of the decision of the Court of Appeals.

(iv) Identify the means of disposition of the case by the Court of Appeals the citation to the decision, if available:

(A) If by opinion, the author of the challenged opinion and the other members of the court who concurred in or dissented from the court's decision;

(B) If by per curiam opinion, affirmance without opinion, or by order, the members of the court who decided the case;²

(C) If a reported decision, the citation.

(v) Contain a notice whether, if review is allowed, the petitioner on review intends to file a brief on the merits or to rely on the petition for review and brief or briefs filed in the Court of Appeals.³

(vi) For a case expedited under [ORAP 10.15](#), prominently display the words "JUVENILE DEPENDENCY CASE EXPEDITED UNDER ORAP 10.15," "TERMINATION OF PARENTAL RIGHTS CASE EXPEDITED UNDER ORAP 10.15," or "ADOPTION CASE EXPEDITED UNDER ORAP 10.15," as appropriate.

(vii) Comply with the requirements in [ORAP 5.95](#) governing briefs containing confidential material.

(b) Any party filing a petition for review shall serve a copy of the petition on every other party to the appeal or judicial review, and file with the Administrator an original petition with proof of service.

Rule 9.17
BRIEFS ON THE MERITS ON REVIEW

* * * * *

Proposal # 12 -- ORAP 9.05(3), ORAP 9.17(2), Appendix 9.05 -- Include Court of Appeals' Opinion Citation on Covers of Supreme Court Briefs and Petitions for Review

(2) * * * * *

(c) The petitioner's brief on the merits on review shall conform to [ORAP 5.05](#), [ORAP 5.35](#), [ORAP 5.95](#), and [ORAP 9.05\(3\)](#). The cover of the brief also shall include the citation to the Court of Appeals decision that is the subject of the petition for review, if that decision was reported.

* * * * *

APPENDIX 9.05

Illustration for ORAP 9.05

[The case title of a petition for review is to appear as shown on the appellate decision in substantially the following form:]

IN THE SUPREME COURT
OF THE STATE OF OREGON

_____)	
Respondent,)	
(or Petitioner) on Review,)	_____ County Circuit
)	Court No. _____
v.)	
_____)	CA A _____
Petitioner)	
(or Respondent) on Review.)	

**PETITION FOR REVIEW OF
[NAME OF PARTY]**

Petition for review of the decision of the Court of Appeals on appeal from a judgment of the Circuit Court for _____ County, Honorable _____, Judge (or an order of [name of agency]). [Citation for the Court of Appeals decision, if any.]

Opinion Filed: [date]

[If the court decided the case by opinion indicating its author]

Author of Opinion: _____
Concurring Judge(s): _____
Dissenting Judge(s): _____

[or]
[If the court affirmed without opinion or
decided the case by per curiam opinion]

Before _____, Presiding Judge

Attorney(s) for Petitioner on Review [if more than one petitioner on review, identify which;
include separate listing for each petitioner on review represented by a different attorney]
[Mailing address, bar number, telephone number, and email address]

[or]

_____ [name of self-represented petitioner on review; include
separate listing for each self-represented petitioner on review]
[Mailing address and telephone number]

Attorney(s) for Respondent on Review [if more than one respondent on review, identify which;
include separate listing for each respondent on review represented by a different attorney]
[Mailing address, bar number, telephone number, and email address]

[or]

_____ [name of self-represented respondent on review; include
separate listing for each self-represented respondent on review]
[Mailing address and telephone number]

PETITIONER ON REVIEW

[INTENDS/DOES NOT INTEND]
TO FILE A BRIEF ON THE MERITS

ORAP COMMITTEE 2024
February 22 Materials

AMENDING RULE(S): Proposal # 14 -- ORAP 11.15 -- Opening Brief in Original Mandamus before Supreme Court

PROPOSER: Elizabeth Tindell, Paralegal and Legal Assistant, Preg O'Donnell & Gillett

EXPLANATION:

[From Ms. Tindell's email:]

I would like to propose an amendment to ORAP 11.15(1) to add two words so that it reads: “Unless otherwise directed by the court, and provided that the court does not receive notice of compliance with the alternative writ of mandamus by the official to whom the writ was issued, the relator shall file *and serve* the opening brief.”

Due to the court’s delay in processing submitted filing and administering service via the electronic system and the relator’s lack of providing an additional service for filed documents, it becomes difficult to calculate the adverse party’s deadline. For example, the opening brief was filed on 3/23, but service by the relator was not done to the adverse party and the court provided notice on 3/24. The deadline for an adverse party to respond is now shortened by one day and an amendment in the wording of the applicable ORAP rule for relator’s opening brief will help to reinforce the adverse party’s deadline as it currently reads.

RULE AS AMENDED:

Rule 11.15
MANDAMUS:
BRIEFS AND ORAL ARGUMENT

(1) Unless otherwise directed by the court, and provided that the court does not receive notice of compliance with the alternative writ of mandamus by the official to whom the writ was issued, the relator shall file and serve the opening brief:

(a) Within 28 days after the date of issuance of the alternative writ of mandamus, in a mandamus proceeding that challenges the action of a judge in a Proposal # 14 -- ORAP 11.15 -- Opening Brief in Original Mandamus before Supreme Court

particular case in the circuit court, the Tax Court, or the Court of Appeals; or

(b) Within 28 days after the date that the case is at issue on the pleadings, in any other mandamus proceeding.

(2) The adverse party 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, or the defendant in any other mandamus proceeding, shall have 28 days after the date the relator serves and files the opening brief to file the answering brief.

(3) The relator may file a reply brief only with leave of the court. A motion requesting leave to file a reply brief shall be filed within seven days after the filing of the brief to which permission to reply is sought. The content of a reply brief shall be confined to matters raised in the answering brief, and the form shall be similar to an answering brief, but need not contain a summary of argument.

(4) In complex cases, such as cases with multiple parties, multiple writs, or both, the parties may confer and suggest an alternative briefing schedule as provided in [ORAP 5.80\(8\)](#).

(5) All briefs shall be prepared in substantial conformity with [ORAP 5.35](#) through [5.50](#). An original brief shall be filed with the Administrator with proof of service showing that a copy was served on each party.

(6) After the briefs are filed, unless the court directs that the writ will be considered without oral argument, the court will set the matter for oral argument as in cases on appeal. At oral argument, the parties shall argue in the order in which their briefs were filed.

ORAP COMMITTEE 2024
February 22 Materials

AMENDING RULE(S): Proposal # 15 -- ORAP 12.27 -- Streamline Notification by Secretary of State in Judicial Disability Proceedings

PROPOSER: Lisa Norris-Lampe, Appellate Legal Counsel, Supreme Court

EXPLANATION:

[From Ms. Norris-Lampe's memo:]

Issue: ORAP 12.27 covers a variety of filing, notice, and briefing scenarios regarding judicial fitness and disability proceedings (per several statutory provisions). One procedural step regarding disability proceedings could be streamlined to ensure timely creation of an appellate case -- specifically, ORS 1.310 requires a judge who has been the subject of a disability determination to provide notification of an appeal to the Secretary of State, who then notifies the Chief Justice and the Commission.¹ The best practice to ensure timely appellate case creation, however, is for the Secretary's notification to be made directly to the Administrator.

Otherwise, various aspects of ORAP 12.27 would benefit from some clarifying and readability-type edits (nothing substantive).

Proposed solution: (1) Amend ORAP 12.27(1) to require the Secretary of State to provide notice to the Chief Justice of an appeal notification from a judge -- as required by ORS 1.310(8) -- by filing notice of the appeal with the Administrator (which will prompt creation of a Supreme Court case and notification to the Chief Justice and other members of the court of the fact of the appeal); and (2) Make other minor, nonsubstantive edits

¹ ORS 1.310(8) provides:

"The subject judge may appeal to the Supreme Court from a determination by the commission that the judge has a disability, by filing a notice with the Secretary of State within 10 days after the date of filing of the written findings of fact by the commission. The Secretary of State shall thereupon notify the commission and the Chief Justice. The commission shall forthwith transmit the official record to the Supreme Court, which upon receipt of the record shall have full jurisdiction of the proceeding."

throughout the rule, to improve readability.

RULE AS AMENDED:

Rule 12.27 JUDICIAL DISABILITY AND DISCIPLINARY PROCEEDINGS

(1) Involuntary Retirement for Disability under [ORS 1.310](#).

(a) On receipt of a notice under ORS 1.310(8) of a judge's appeal of a determination of disability by the Commission, the Secretary of State shall notify the Chief Justice, by filing notice with the Administrator, and also shall notify the Commission.^{2]}

(b) On receipt of notice from the Secretary of State of a judge's appeal of a determination of disability by the Commission, the Commission shall, within 14 days, transmit the record to the Supreme Court. The Administrator shall inform the judge of the date of receipt of the record from the Commission.

(c) The judge shall have 28 days after the date of the notice from the court of receipt of the record to file a petition for review of the Commission's determination of disability, together with an opening brief in support of the petition. The Commission shall have 28 days after the date of filing of the opening brief to file an answering brief. The judge may file a reply brief, which shall be due 14 days after the date of filing of the Commission's answering brief.

(d) If the case is argued orally, the judge shall argue first, followed by the Commission.

(e) If the court remands the matter to the Commission for additional findings of fact, the review will be held in abeyance pending receipt from the Commission of notice of its action on remand.

(f) The decision of the Supreme Court to affirm, reverse or annul the Commission's determination is subject to a petition for reconsideration under [ORAP 9.25](#).

² Editorial note: The suggested final phrase, that the Secretary also notify the Commission, duplicates a statutory requirement, but helps a reader of this rule more easily understand what is now numbered as paragraph (1)(b) (regarding "next steps" after the Secretary sends notice to the Commission).

If no petition for reconsideration is filed or if a petition for reconsideration is filed, on disposition of the petition, the Administrator shall issue the appellate judgment and shall provide a copy of the appellate judgment to the Secretary of State.

(2) Disciplinary Proceedings under [ORS 1.420](#).

(a) Appointment of Masters

~~If the Commission requests appointment of three masters to hold a hearing under Under [ORS 1.420\(1\)\(b\)](#), if the Commission requests appointment of three masters to hold a hearing, the request shall be made in the form of a petition, which may nominate three or more candidates for appointment as masters. The and the Commission shall serve a copy of the petition on the judge. The Commission may nominate three or more candidates for appointment as masters.~~ The judge shall have 14 days after being served with the Commission's request to file a response, which response may include nominations for three or more candidates for appointment as masters.

(b) Review of Commission's Recommendations¹

(i) ~~If the Commission recommends to the court the censure, suspension, or removal from office of a judge under Under [ORS 1.420\(4\)](#), if the Commission recommends to the court the censure, suspension, or removal from office of a judge,~~ the Commission shall accompany its recommendation with the record of proceedings before the commission. The Administrator shall inform the judge of the date of receipt of the record from the Commission.

(ii) A request for receipt of additional evidence shall be filed as a motion in the manner provided in [ORAP 7.05](#) and [ORAP 7.10](#).

(iii) The judge shall have 28 days after the date of the notice from the court of receipt of the record to file an opening brief ~~concerning the Commission's recommendation~~. The Commission shall have 28 days after the date of filing of the opening brief to file an answering brief. The judge may file a reply brief, which shall be due 14 days after the date of filing of the Commission's answering brief. If the judge ~~does not fails to~~ file an opening brief, the Commission may file an opening brief, and thereafter the judge may file an answering brief.

(iv) If the case is argued orally, the judge shall argue first, followed by the Commission, unless the judge did not file any brief, in which case the Commission alone may ~~present oral argument, orally argue the matter.~~

(v) If the court remands ~~the matter~~ to the Commission for additional findings of fact, the review will be held in abeyance pending receipt from the Commission of notice of its action on remand.

(vi) The decision of the Supreme Court to affirm, reverse, or annul the Commission's determination is subject to a petition for reconsideration under [ORAP 9.25](#). If no petition for reconsideration is filed or if a petition for reconsideration is filed, on disposition of the petition, the Administrator shall issue the appellate judgment. If the decision is for removal of the judge from office, the Administrator shall provide a copy of the appellate judgment to the Secretary of State.

(vii) The decision of the Commission after hearing or upon review of the record and report of the masters under [ORS 1.420](#) shall be a public record, together with the recommendations, if any, of the Commission to the Supreme Court.*

(c) Temporary Suspension Under [ORS 1.420\(5\)](#)

(i) If the Supreme Court on its own motion proposes to suspend a judge during the pendency of disciplinary proceedings under [ORS 1.420](#), the Administrator shall provide written notice thereof to the judge.

(ii) If the Commission files a recommendation that a judge be suspended during the pendency of a disability determination proceeding, the Commission shall serve a copy of the recommendation on the judge.

(iii) The judge shall have 14 days after the date of either the court's notice of proposed suspension or ~~after the date of~~ the Commission's recommendation that the judge be suspended during the pendency of a disability determination to file a memorandum regarding the proposed or recommended suspension.

(iv) When the court on its own motion proposes to suspend a judge during the pendency of disciplinary proceedings, the Commission shall have 14 days after the date of filing of the judge's memorandum to file a memorandum regarding the proposed suspension.

(v) The matter of a proposed or recommended temporary suspension will not be subject to oral argument unless oral argument is requested by the judge or the Commission.

(d) Consent to Discipline Under [ORS 1.420\(1\)\(c\)](#)

(i) On receipt of a judge's consent to censure, suspension, or removal, the court may request briefing and oral argument before the consent is submitted to the court for decision.

(ii) If the court accepts the stipulation of facts part of a consent, but rejects the disciplinary action agreed to by the judge and Commission and remands the matter to the Commission for further proceedings, the review will be held in abeyance pending receipt of notice of the Commission's decision on remand.

(iii) A judge's consent to censure, suspension, or removal shall not be a public record until the consent or stipulation is submitted to the Supreme Court for a decision. On submission to the court, the consent shall be a public record.*

(3) Temporary Disability Proceedings Initiated by Chief Justice Under [ORS 1.425](#).

(a) Review of Commission's Recommendation

(i) Under [ORS 1.425\(1\)\(a\)](#), if the Commission elects to proceed as provided in [ORS 1.420](#), the procedure in the Supreme Court shall be the same as provided in subsection (2) of this rule.

(ii) Under [ORS 1.425\(4\)\(b\)](#), if the Commission finds that the judge has a temporary disability and recommends to the court that the judge be suspended, the Commission shall accompany its recommendation with the record of proceedings before the Commission. The Administrator shall inform the judge of the date of receipt of the record from the Commission.

(iii) A request for receipt of additional evidence shall be filed as a motion in the manner provided in [ORAP 7.05](#) and [ORAP 7.10](#).

(iv) The judge shall have 28 days after the date of the notice from the court of receipt of the record to file an opening brief ~~concerning the Commission's recommendation~~. The Commission shall have 28 days after the date of filing of the opening brief to file an answering brief. The judge may file a reply brief, which shall be due 14 days after the date of filing of the Commission's answering brief. If the judge ~~does not fails to~~ file an opening brief, the Commission may file an opening brief, and thereafter the judge may file an answering brief.

(v) If the case is argued orally, the judge shall argue first, followed by the Commission, unless the judge did not file any brief, in which case the Commission alone may ~~present oral argument, orally argue the matter~~.

(vi) The decision of the Supreme Court is subject to a petition for reconsideration under [ORAP 9.25](#). If no petition for reconsideration is filed or if a petition for reconsideration is filed, on disposition of the petition, the Administrator shall issue the appellate judgment and shall provide a copy of the

appellate judgment to the Secretary of State.

(vii) The decision of the commission after hearing or upon review of the record and report of masters under [ORS 1.425](#) shall not be a public record, except for a decision and recommendation for suspension under [ORS 1.425\(4\)\(b\)](#).*

(b) Temporary Suspension Under [ORS 1.425\(5\)](#)

(i) If the Supreme Court on its own motion proposes to suspend a judge during the pendency of disability, the Administrator shall provide written notice thereof to the judge.

(ii) If the Commission files a recommendation that a judge be suspended during the pendency of a disability determination proceeding, the commission shall serve a copy of the recommendation on the judge.

(iii) The judge shall have 14 days after the date of either the court's notice of proposed suspension, or the eCommission's recommendation that the judge be suspended, during the pendency of a disability determination to file a memorandum regarding the proposed or recommended suspension.

(iv) When the court on its own motion proposes to suspend a judge during the pendency of disability proceedings, the Commission shall have 14 days after the date of filing of the judge's memorandum to file a memorandum regarding the proposed suspension.

(v) The matter of a proposed or recommended temporary suspension will not be subject to oral argument unless oral argument is requested by the judge or the Commission.

(c) Consent to Treatment Under [ORS 1.425\(4\)\(a\)](#)

(i) On receipt of a judge's consent to counseling, treatment or other assistance or to comply with other conditions in respect to the future conduct of the judge, the court may request briefing and oral argument before the consent is submitted to the court for decision.

(ii) A judge's consent to counseling, treatment, or assistance or compliance with other conditions shall not be a public record until the consent is accepted by the Supreme Court.

4) As used in this rule, "Commission" means the Commission on Judicial Fitness and Disability.

¹ *See generally* [ORS 1.430](#).

* *See* [ORS 1.440\(1\)](#).

**ORAP COMMITTEE 2024
February 22 Materials**

AMENDING RULE(S): Proposal # 16 -- ORAP 13.05(5) -- Extend Time to File Costs Bill to 28 Days

PROPOSER: Alice Meyer, Appellate Court Records Section

EXPLANATION:

[From Ms. Meyer's email:]

[O]n January 1, 2023, ORAP 13.10(2) was changed to allow 28 days to file a petition for attorney fees. But ORAP 13.05(5) remained at 21 days to file the petition for costs and disbursements. From a filing and Records tracking point of view, it's * * * problematic to have the due dates be seven days apart, especially if [the prevailing party] file[s] one petition for costs and fees.

RULE AS AMENDED:

**Rule 13.05
COSTS AND DISBURSEMENTS**

* * * * *

(5) (a) A party seeking to recover costs shall file a statement of costs and disbursements within 28~~21~~ days after the date of the decision. The filing of a petition for review or a petition for reconsideration does not suspend the time for filing the statement of costs and disbursements.

* * * * *

ORAP COMMITTEE 2024
February 22 Materials

AMENDING RULE(S): Proposal # 19 -- ORAP 16.10, ORAP 16.25, ORAP 16.40, ORAP 16.45 -- Additional Clarifications of eFiling Rules for ACMS Upgrade

PROPOSER: Daniel Parr, Appellate Court Administrator

EXPLANATION:

[From Mr. Parr's memo:]

I am submitting these changes to go along with the temporary rules implemented for the 2023 ACMS upgrade. My goal is for these changes, along with the temporary rules, to be a starting point in clarifying the rules based on feedback we are receiving from users.

Issue: The courts implemented a new case management system on December 11, 2023. This new system included a combined eFiling and public access system that is now open to attorneys, self-represented litigants, parties, and the public. There are several rules that need clarification based on questions and feedback we are receiving in Appellate Court Records.

Proposed solution: Amend portions of ORAP 16 and add clarifying notes when necessary to ensure attorneys, their staff, and self-represented litigants understand what they need to do to successfully use the system. Alternatively, the clarifying footnotes could be incorporated into the rules if appropriate.

RULE AS AMENDED:

Rule 16.10
eFILERS

- (1) Authorized eFilers
 - (a) Any person may register to become an eFiler.
 - (b) To become an eFiler, a user must create an account with the eFiling system.
- (2) Conditions of Electronic Filing
 - (a) To access the eFiling system, each eFiler agrees to and shall

Proposal # 19 -- ORAP 16.10, ORAP 16.25, ORAP 16.40, ORAP 16.45 -- Additional
Clarifications of eFiling Rules for ACMS Upgrade

(i) review the Appellate eFiling and Public Portal Guide" and "Appellate eFile FAQs" "How to eFile" documents available on the appellate court's eFiling website at:
< <https://www.courts.oregon.gov/services/online/Pages/appellate-efile.aspx>>;

(ii) register for access to the eFiling system and link your user account with your record in ACMS;¹

(iii) comply with the electronic filing terms and conditions when using the eFiling system;

(iv) furnish required information for case processing; and

(v) update their account information in the eFiling system if any of that information changes, including but not limited to, any change in the user's email address.

(b) An eFiler's username and password may be used by only the user to whom the username and password were issued. Attorney users only may authorize an employee of that attorney's law firm or office or other person to use the username and password.²

* * * * *

¹ To link your user account to your record in ACMS, an OSB member or *pro hac vice* attorney should use the Request Attorney Access process in the system. A self-represented litigant should use the Request Case Access process on your case.

² An employee of an attorney or the attorney's law firm may create an eFiling account and file on behalf of the attorney.

Rule 16.25

ELECTRONIC FILING AND ELECTRONIC FILING DEADLINES

(1) Except as provided in subsection (4), the filing deadline for any document filed electronically is 11:59:59 p.m. in the time zone in which the court is located on the date by which the document must be filed.

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

(3) (a) The court considers a document received when the eFiling system receives the document. The eFiling system will send an email that includes the date and time of

receipt to the eFiler's email address, and to any other email address provided by the eFiler, to confirm that the eFiling system received the document.

(b) When the court accepts the document for filing, the eFiling system will affix to the document the time of day, the day of the month, the month, and the year that the eFiling system received the document.¹ The date and time of filing entered in the register relate back to the date and time that the eFiling system received the document. The eFiling system will send an email that includes the date and time of acceptance to the eFiler's email address and to any other email address provided by the eFiler. If the document was electronically served by the eFiling system pursuant to [ORAP 16.45](#),² the date of service will also relate back to the date that the eFiling system received the document.

* * * * *

¹ Due to technical processes that occur to the document upon submission, the time stamped on a document and the time entered on the docket entry in the register may be different by a minute or two. For the purposes of this and all other rules, the date and time of the docket entry determines when a document was filed. The date and time on a docket entry will always match the time when the filing was received by the system.

² As provided in [ORAP 16.45\(3\)](#), the eFiling system cannot electronically serve some documents.

Rule 16.40 ELECTRONIC SIGNATURES

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

* * * * *

¹ The username and password of an employee of a law firm or attorney constitutes the signature for an attorney when that employee is filing on behalf of the attorney.

Rule 16.45 ELECTRONIC SERVICE

(1) Registration as an eFiler with the eFiling system constitutes consent to receive service via the electronic service function of the eFiling system.

(2) (a) Except as provided in subsection (3), a party eFiling a document may use

the eFiling system's eService function to accomplish service of that document on any other party's attorney or on a self-represented party, if that party's attorney or the self-represented party is a registered eFiler.¹ The eFiling system will generate an email to the attorney or self-represented party being eServed that includes a link to the document that was eFiled. To access the eFiled document, the attorney or self-represented party who has been eServed must log in to the eFiling system.

* * * * *

¹ Registration includes linking your appellate eFiling account with your record in the ACMS system as provided in ORAP 16.10(2)(a)(ii).