

**ORAP COMMITTEE 2024
MATERIALS**

MEETING DATE: APRIL 25, 2024, 9 A.M. - 12 P.M.

- Proposal 7: ORAP 5.45, Limit Combining Preservation and Std of Review in Briefs
- Proposal 8: ORAP 5.90 etc, Petitions for Review and Balfour Briefs
- Proposal 9: ORAP 6.05 etc, COA Oral Argument Temp Rules
- Proposal 11: ORAP 8.35, Media Coverage During Appellate Court Proceedings

ORAP COMMITTEE 2024
April 25 Materials

AMENDING RULE(S): Proposal # 7 -- ORAP 5.45 -- Limit Combining Preservation and Std of Review Sections in Briefs

PROPOSER: Hon. Robyn Aoyagi, Court of Appeals

EXPLANATION:

WORKGROUP NOTES FOR APRIL 25

The workgroup on Proposal 7 is suggesting a small revision to the proposal to reflect J. Aoyagi's agreement to expressly include TPR in the exceptions to not combining standards of review and preservation sections. Because the attached is showing everything simply in track changes, the revision is repeated here **as reflected in bold**. The two revisions appear in the opening clause of the two sections, as follows:

ORAP 5.45(4)(c): "In juvenile dependency cases (**including termination of parental rights**)"

ORAP 5.45(5)(b): "In juvenile dependency cases (**including termination of parental rights**)"

However, the workgroup still has reservations about the proposal and would like it on the agenda for further discussion with the committee.

WORKGROUP NOTES FOR MARCH 20

Ben Gutman will briefly summarize the discussions for the committee. Otherwise, the workgroup asks the committee to pass the matter to April.

ORIGINAL EXPLANATION

[From Judge Aoyagi's emails:]

The goal of this amendment is to reduce the frequency with which parties improperly combine the preservation-of-error and standard-of-review sections for multiple assignments of error. The concern is that improper combination of those sections creates extra works for the Court of Appeals judges, as parties often make mistakes and provide incomplete information in conjunction with improper combining. Currently, ORAP 5.45 allows combination of only the "Argument" sections for multiple assignments of error, but it is nonetheless common for parties to combine the preservation-of-error and standard-of-review sections too, suggesting that not everyone finds the rule clear on that point.

This proposed amendment [which is a modified version of a proposal submitted in 2022] now

Proposal # 7 -- ORAP 5.45 -- Limit Combining Preservation and Std of Review Sections
in Briefs

serves two purposes.

First, it emphasizes that the argument “combining” provision in current ORAP 5.45(6) is limited to the argument section and does not allow combining of other sections. Improper combining of other sections often results in omissions in the preservation and standard of review sections that create additional work for the court in evaluating the parties’ arguments.

Second, it adds new provisions to ORAP 5.45(4) and (5), allowing combining of the preservation and standard of review sections in juvenile dependency cases in certain circumstances. Those additions recognize the unusually duplicative nature of assignments of error in some juvenile dependency cases and should address an issue raised during the last ORAP amendment cycle when the amendment to sub (6) was first proposed.

RULE AS AMENDED:

Rule 5.45 ASSIGNMENTS OF ERROR AND ARGUMENT

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

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

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

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

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

(ii) Each assignment of error must set out pertinent quotations of the record where the question or issue was raised and the challenged ruling was made, together with reference to the pages of the transcript or other parts of the record

quoted or to the excerpt of record if the material quoted is set out in the excerpt of record. When the parts of the record relied on under this clause are lengthy, they must be included in the excerpt of record instead of the body of the brief.

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

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

(c) In juvenile dependency cases (including termination of parental rights), if several assignments of error present essentially the same legal question, and the arguments in support of them are combined as allowed by subsection (6), then the preservation sections may also be combined, if the claims of error were preserved at the same time in the same way.

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

(b) In juvenile dependency cases (including termination of parental rights), if several assignments of error present essentially the same legal question, and the arguments in support of them are combined as allowed by subsection (6), then the standard-of-review sections may also be combined, if the standards of review are identical.

(6) Each assignment of error must be followed by the argument. If several assignments of error present essentially the same legal question, the argument in support of them may be combined so far as practicable. Where argument is combined, each assignment of error must still contain its own "Preservation of Error" and "Standard of Review" sections, as shown in Appendix 5.45, except in juvenile dependency cases as provided in subsections (4)(c) and (5)(b) of this rule

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

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

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

³ *See State v. Ardizzone*, 270 Or App 666, 673, 349 P3d 597, *rev den*, 358 Or 145 (2015) (declining to review for plain error absent a request from the appellant).

ORAP COMMITTEE 2024
April 25 Materials

AMENDING RULE(S): Proposal # 8 -- ORAP 5.90(5), 5.92, ORAP 9.05 -- Petitions for Review and Supplemental Pro Se Briefs and Balfour Briefs

PROPOSER: Harrison Latto

UPDATE INFO: Updated April 15, 2024
(submitted by Lisa Norris-Lampe and Ernie Lannet)

EXPLANATION:

WORKGROUP NOTES FOR APRIL 25

Updated explanation (from Lisa Norris-Lampe and Ernie Lannet, 3/4/24; updated proposals begin on p 5; updates from last meeting appear on pp 11-14):

At its last meeting, the ORAP Committee generally agreed with the proposals described in our 3/4/24 submission (summarized below), but also suggested that a represented client submitting either a supplemental pro se petition for review under new ORAP 9.06(2) or a pro se petition for review under new ORAP 9.06(3), be permitted to submit -- as their petition on review -- their filing previously submitted in the Court of Appeals.

The edits set out on pp 11-14 -- highlighted in yellow to distinguish from the 3/4/24 version -- incorporate those suggestions, by stating that a represented client filing either a supplemental *pro se* petition under ORAP 9.06(2), or a *pro se* petition under (3), may submit -- as that petition -- all or part of any supplemental pro se brief filed in the Court of Appeals. We did not include in (3) the option of submitting Part B of a Court of Appeals *Balfour* brief because, if the client had filed a *Balfour* brief and wanted to pursue a petition for review, defense counsel would file a *Balfour* petition under ORAP 9.06(1), and so no reference to a Section B is needed in ORAP in 9.06(3).

The changes just noted prompted related minor changes, requiring the client to include a statement that the petition duplicated all or part of the client's supplemental pro se brief previously filed in the Court of Appeals (and a bit of reorganization). Otherwise, throughout ORAP 9.06, all "statement" provisions now specify that the statement must be included on the cover of the petition for review -- such that counsel will ensure inclusion of the statement.

Proposal # 8 -- ORAP 5.90(5), 5.92, ORAP 9.05 -- Petitions for Review and Supplemental Pro Se Briefs and Balfour Briefs

Finally, this version includes, on p 11, the minor change to ORAP 9.05 discussed at the last meeting, striking the final sentence from FN 4 (approved, but not yet documented).

***Updated explanation (from Lisa Norris-Lampe and Ernie Lannet, 3/4/24;
new proposal begins on p 4):***

In discussing Mr. Latto's concept proposal at the last meeting, the ORAP Committee generally understood the key parts of his proposal as follows:

- *Balfour* petitions for review:
 - The rule permitting *Balfour*-style petitions for review, ORAP 5.90(5) (in the C/A *Balfour* briefs rule), should more clearly state that a *Balfour* petition is permitted only when a *Balfour* brief first was filed in the Court of Appeals.
 - That rule should be moved to the petition for review chapter (Chapter 9) (or at least should include a cross-reference to Chapter 9).
- Supplemental *pro se* petitions for review:
 - The rule permitting supplemental *pro se* briefs in the Court of Appeals, ORAP 5.92, does not contain any companion provision about supplemental *pro se* petitions for review (as in the *Balfour* rule), so it is unclear the extent to which (or when) supplemental *pro se* petitions are permitted.
 - ORAP 5.92 therefore should be amended to clarify that supplemental *pro se* petitions for review are permitted, when the client previously filed a supplemental *pro se* brief in the Court of Appeals.
- *Pro se* petitions for review filed by represented clients:
 - The rules should expressly permit an indigent, represented client to file their own petition for review, in the event that counsel does not think that any petition should be filed. (Stated another way, if *no Balfour* brief were filed in the Court of Appeals, and counsel now thinks that a petition for review should not be filed, the client should be able to file their own *pro se* petition for review.)

Set out below is a proposed new rule, ORAP 9.06, that is intended to capture Mr. Latto's proposal, for the ORAP Committee's consideration. In particular:

Proposal # 8 -- ORAP 5.90(5), 5.92, ORAP 9.05 -- Petitions for Review and Supplemental Pro Se Briefs and Balfour Briefs

- Subsection (1), *Balfour* petitions for review:
 - Moves the essential content from current ORAP 5.90(5) to new 9.06(1)(a) (updated for petitions for review), including the caveat that counsel's obligation is limited to specific tasks; and
 - Describes, in relation to a petition (as opposed to a brief), what must be contained in Section A and in Section B.
- Subsection (2), Supplemental *pro se* petitions for review:
 - Proposes an expanded approach (broader than the proponent's), respecting when a supplemental *pro se* petition may be filed:
 - ▶ If a supplemental *pro se* brief were filed in the C/A, then no motion needed to file a supplemental *pro se* petition;
 - ▶ If no supplemental *pro se* brief were filed in the C/A, then motion for leave to file is required (similar to the C/A rule requiring motion for leave to file a supp *pro se* brief). *Rationale for suggesting this provision (for discussion):* The consideration whether to supplement counsel's brief filed in the Court of Appeals is qualitatively different than the consideration whether to supplement counsel's petition for review filed in the Supreme Court (which often is limited to only some of multiple assignments of error).
 - Otherwise, generally adapts the supplemental *pro se* brief rule (ORAP 5.92) to the petition for review context.
- Subsection (3), *pro se* petitions for review (by represented indigent clients):
 - Adds a provision expressly permitting an indigent represented client, whose counsel decides not to file a petition for review (or cannot file in *Balfour* format because no *Balfour* brief filed in the Court of Appeals), to file the client's own *pro se* petition for review (provisions generally track the supplemental *pro se* petition section, adapted as necessary).
 - Note: Although court-appointed counsel most typically does file a petition for review if the client so requests, there is one possible exception (*i.e.*, an identifiable practical circumstance to which this new subsection would apply): When the Court of Appeals reverses the trial court and orders the relief that the counsel had requested, but the client had filed a C/A supplemental *pro se* brief that had requested other relief, counsel would ask

the client whether they want to seek review on those other issues (which they might pursue *pro se*).

And note, this proposal suggests other minor amendments to ORAP 5.90 and ORAP 5.92, to eliminate outdated copy requirements and to update binary gender wording.

[From Mr. Latto's email:]

I am writing with a suggestion for an amendment to ORAP 5.90(5). That subsection permits, in cases where counsel is court-appointed, the filing of a Balfour-type petition for review, "[i]n any case in which * * * counsel filed a [Balfour] brief in the Court of Appeals[.]" But Rule 5.92 also permits the represented litigant to file a *pro se*, "supplemental" brief in the Court of Appeals. Rule 5.92 allows the litigant personally to elaborate on arguments made in the counsel-prepared brief, or to pursue other claims asserted in the trial court, that were omitted from the counsel-prepared brief.

Rule 5.90(5) does not explicitly state, but implies that a Balfour-type petition for review maybe filed ONLY when a Balfour brief was filed in the Court of Appeals. The fact that Rule 5.92 lacks any comparable provision, similar to ORAP 5.90(5), supports the interpretation that a Balfour-type, supplemental petition for review is permitted ONLY when a Balfour brief is filed in the Court of Appeals, and not when the party has filed a *pro se* supplemental brief. I think Rule 5.92 might be amended to clarify, or provide that such a party is permitted to file a *pro se* supplemental petition for review, after he or she filed a supplemental brief in the Court of Appeals. There is an important consideration that applies equally to that situation, which is that the party may wish to assert claims, found only in his supplemental opening brief, before the Supreme Court, in order to preserve his or her ability to pursue those claims in federal court.

Incidentally, I also think that subsection (5) of Rule 5.90, which deals with a petition for review, is more appropriately placed or at least cross-referenced in Chapter 9 of the ORAP.

While I'm on the topic: I think that court-appointed counsel might legitimately determine, even after he or she has filed an "ordinary" brief in the Court of Appeals, that (especially after an AWOP) there is no legitimate basis upon which he can honestly contend that the case is worthy of review by the Supreme Court, under its criteria. The considerations are completely different under the ORAP, between a brief in the Court of Appeals, and a petition for review. It follows that court-appointed counsel should be entitled to take a pass on a petition for review under those circumstances, and require the litigant to file his or her own, *pro se* petition for review. No rule permits that.

[Additional note from SP Armitage: ORAP 16.15(1), which provides for the required

formatting for documents filed electronically, expressly mentions supplemental pro se petitions for review.]

RULES AS AMENDED (4/15/24):

Rule 5.90
"BALFOUR" BRIEFS FILED
BY COURT-APPOINTED COUNSEL

(1) If counsel appointed by the court to represent an indigent defendant in a criminal case on direct appeal has thoroughly reviewed the record, has discussed the case with trial counsel and the client, and has determined that the case does not raise any arguably meritorious issues, counsel shall file an opening brief with two sections:

(a) Section A of the brief shall contain:

(i) A statement of the case, including a statement of the facts of the case. If the brief contains a Section B with one or more claims of error asserted by the client, the statement of facts shall include facts sufficient to put the claim or claims of error in context.

(ii) A description of any demurrer or significant motion filed in the case, including, but not limited to, a motion to dismiss, a motion to suppress and a motion *in limine*, and the trial court's disposition of the demurrer or motion.

(iii) A statement that the case is being submitted pursuant to this rule, that counsel has thoroughly reviewed the record and discussed the case with trial counsel and the client, and that counsel has not identified any arguably meritorious issue on appeal. If the brief does not contain a Section B, counsel also shall state that counsel contacted the client, gave the client reasonable opportunity to identify a claim or claims of error, and that the client did not identify any claim of error for inclusion in the brief.

(iv) Counsel's signature.

(b) (i) Section B of the brief is the client's product and may contain any claim of error that the client wishes to assert. The client shall attempt to state the claim and any argument in support of the claim as nearly as

practicable in proper appellate brief form. Section B of the brief shall not exceed 48 pages in length. The last page of Section B of the brief shall contain the name and signature of the client.

(ii) Counsel's obligation with respect to Section B of the brief shall be limited to correcting obvious typographical errors, preparing copies of the brief as needed, serving the appropriate parties, and filing the original brief ~~and the appropriate number of copies~~ with the court.

(2) A case in which appellant's opening brief is prepared and filed under this rule shall be submitted without oral argument, unless otherwise ordered by the court.

(3) On reviewing the record and the briefs filed by the parties, if the court identifies one or more arguably meritorious issues in the case, the court shall notify appellant's counsel of the issue or issues so identified. Appellant's counsel shall have 28 days after the date of the court's notice to file a supplemental opening brief addressing those issues. In addition to addressing the issue or issues identified by the court, counsel may address any other arguably meritorious issue counsel has identified. Respondent shall have 28 days after appellant files a supplemental opening brief to file a response or supplemental answering brief addressing the issues raised in the supplemental opening brief.

(4) In a case other than a criminal case on direct appeal, court-appointed counsel who determines that there are no meritorious issues on appeal may submit a brief under this rule, in which case the matter will be submitted without oral argument, unless otherwise ordered by the court.

[(5) In any case in which the appellant is represented by court-appointed counsel on appeal and counsel filed a brief in the Court of Appeals under subsection (1) of this rule, counsel may submit a petition for review that contains a Section A that complies with ORAP 9.05(3)(a) and a Section B that complies with paragraph (1)(b) of this rule.]

See generally State v. Balfour, 311 Or 434, 451-53, 814 P2d 1069 (1991).

Rule 5.92

SUPPLEMENTAL *PRO SE* BRIEFS

- (1) When a client is represented by court-appointed counsel and the client is
- Proposal # 8 -- ORAP 5.90(5), 5.92, ORAP 9.05 -- Petitions for Review and
Supplemental Pro Se Briefs and Balfour Briefs

dissatisfied with the brief that counsel has filed, within 28 days after the filing of the brief, either the client or counsel may move the court for leave to file a supplemental *pro se* brief.¹ If the client files the motion, in addition to serving all other parties to the case, the client shall serve counsel with a copy of the motion. If counsel files the motion, in addition to serving all other parties to the case, counsel shall serve the client with a copy of the motion. Whoever files the motion may tender the proposed supplemental *pro se* brief along with the motion.

(2) The client shall attempt to prepare a supplemental *pro se* brief as nearly as practicable in proper appellate brief form. The brief shall identify questions or issues to be decided on appeal as assignments of error identifying precisely the legal, procedural, factual, or other ruling that is being challenged.² The last page of the brief shall contain the name and signature of the client. Unless the court orders otherwise, the statement of the case, including the statement of facts, and the argument together shall be limited to five pages.

(3) If the supplemental *pro se* brief includes an excerpt of record, the excerpt must contain only the information included in [ORAP 5.50\(2\)](#),³ and only if that material is not included in the appellant's opening brief. If the supplemental *pro se* brief includes an appendix, it must comply with the appendix rules in [ORAP 5.52](#) and shall not contain any confidential material.

(4) A supplemental *pro se* brief is the client's product; therefore, if the client requests assistance in preparing the brief, counsel's obligation shall be limited to correcting obvious typographical errors, preparing copies of the brief, serving the appropriate parties, and filing the original brief with the court. If the client prepares and files the brief without the assistance of counsel, in addition to serving all other parties to the appeal, the client shall serve a copy of the brief on counsel.

(5) The provision of ORAP 16.15(1) requiring that all electronic filings be text-searchable does not apply to a brief filed under this rule.

¹ "*Pro se*" means "for oneself" or "on one's own behalf." A supplemental *pro se* brief is the product of the party ~~himself or herself~~themselves, and not of the attorney representing the party.

² See [ORAP 5.45](#), which describes requirements for assignments of error and argument.

³ See [ORAP 5.50\(2\)](#) (indicating that an excerpt of record must contain "[t]he judgment or order on appeal or judicial review" and "[a]ny written or oral rulings by the lower tribunal

or agency addressing the issues presented by the assignments of error").

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, 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](#).

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

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

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

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

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

time for filing a petition for reconsideration expires.

(iii) If a petition for review is filed after the filing of a timely petition for reconsideration, the petition for review will not be submitted to the Supreme Court until the Court of Appeals issues its written disposition of the petition for reconsideration.

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

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

(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:

(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:

(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

(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.

(4) Contents of Petition for Review

The petition shall contain in order:

(a) A short statement of the historical and procedural facts relevant to the review, but facts correctly stated in the decision of the Court of Appeals should not be restated.

(b) Concise statements of the legal question or questions presented on review and of the rule of law that the petitioner on review proposes be established, if review is allowed.

(c) A statement of specific reasons why the legal question or questions presented on review have importance beyond the particular case and require decision by the Supreme Court.⁴

(d) If desired, and space permitting, a brief argument concerning the legal question or questions presented on review.

(e) A copy of the decision of the Court of Appeals, including the court's Proposal # 8 -- ORAP 5.90(5), 5.92, ORAP 9.05 -- Petitions for Review and Supplemental Pro Se Briefs and Balfour Briefs

opinion and any concurring and dissenting opinions.

¹ See generally [ORS 2.520](#). See [ORAP 7.25\(2\)](#) regarding information that must be included in a motion for extension of time to file a petition for review.

² See [Appendix 9.05](#).

³ See [ORAP 9.17](#) regarding briefs on the merits.

⁴ See [ORAP 9.07](#) regarding the criteria considered by the Supreme Court when deciding whether to grant discretionary review. An assertion of the grounds on which the decision of the Court of Appeals is claimed to be wrong, without more, does not constitute compliance with this paragraph.

~~See [ORAP 5.90\(5\)](#) regarding filing a petition for review where a "Balfour" brief was filed on behalf of the appellant in the Court of Appeals.~~

Rule 9.06
"BALFOUR" AND PRO SE PETITIONS FOR REVIEW
FILED BY CLIENTS REPRESENTED BY COURT-APPOINTED COUNSEL

(1) "Balfour" Petitions for Review

(a) In any case in which the petitioner on review is represented by court-appointed counsel on appeal, and counsel filed a "Balfour" brief in the Court of Appeals under [ORAP 5.90\(1\)](#), counsel may submit a petition for review under [ORAP 9.05](#) that contains a Section A that complies with [ORAP 9.05\(3\)\(a\)](#) and a Section B that is the client's product.

(b) If the client has filed a Section B pursuant to subparagraph (d)(i) of this rule, the [cover of the petition](#) shall contain a statement that Section B replicates Section B of the opening brief filed in the Court of Appeals.

(c) Section A of the petition for review shall contain:

(i) A statement of historical and procedural facts, as required by [ORAP 9.05\(4\)\(a\)](#);

(ii) A statement that the petition for review is being submitted

pursuant to this rule and that counsel has thoroughly reviewed the Court of Appeals decision and the record, has discussed the case with the client, and has not identified any arguably meritorious issue to raise in a petition; and

(iii) Counsel's signature.

(d) Section B of the petition for review is the client's product and may contain any legal question that the client wishes the court to review.

(i) The client may submit, as Section B of the petition, the Section B of the opening brief filed in the Court of Appeals.

(ii) If the client does not submit the Section B of the opening brief filed in the Court of Appeals, the client shall attempt to identify in Section B of the petition the legal question, proposed rule of law, and reasons the case presents a significant issue of law as nearly as practicable in proper petition form, as set out in ORAP 9.05(4)(b) through (d). A Section B filed under this subparagraph shall not exceed 15 pages in length.

(iii) The last page of Section B of the petition shall contain the name and signature of the client.

(e) Counsel's obligation with respect to Section B of the petition for review shall be limited to correcting obvious typographical errors, attaching the Court of Appeals opinion, as required by ORAP 9.05(4)(e), preparing copies of the petition as needed, serving the appropriate parties, and filing the original petition with the court.

(2) Supplemental *Pro Se* Petitions for Review

(a) A client represented by court-appointed counsel on appeal, who is dissatisfied with a petition for review that counsel has filed, may file a supplemental *pro se* petition for review¹ as set out in this subsection.

(b) If the client previously filed a supplemental *pro se* brief in the Court of Appeals under ORAP 5.92, the client may file a supplemental *pro se* petition for review without moving for leave to file.

(i) A supplemental *pro se* petition filed under his paragraph is due 14 days after the filing of the petition filed by counsel.

(ii) The cover of a supplemental *pro se* petition filed under this

paragraph shall contain a statement that the client previously filed a supplemental *pro se* brief in the Court of Appeals.

(c) If the client did not previously file a supplemental *pro se* brief in the Court of Appeals under ORAP 5.92, either the client or counsel may move the court for leave to file a supplemental *pro se* petition for review, due 14 days after the filing of the petition filed by counsel. If the client files the motion, in addition to serving all other parties to the case, the client shall serve counsel with a copy of the motion. If counsel files the motion, in addition to serving all other parties to the case, counsel shall serve the client with a copy of the motion. Whoever files the motion may tender the proposed supplemental *pro se* petition along with the motion.

(d) Content.

(i) If the client previously filed a supplemental *pro se* brief in the Court of Appeals under ORAP 5.92, the client may submit, as the client's supplemental *pro se* petition for review, all or part of the supplemental *pro se* brief filed in the Court of Appeals. If the client does so, the cover of the supplemental *pro se* petition shall contain a statement that the supplemental *pro se* petition replicates all or part of the *pro se* supplemental brief filed in the Court of Appeals.

(ii) Otherwise, the client shall attempt to prepare a supplemental *pro se* petition for review, whether filed under paragraph (2)(b) or (c) of this rule, as nearly as practicable, in the proper form and with the proper content, as required by ORAP 9.05(3) and (4), except that the petition must not exceed either 5,000 words or, alternatively, 15 pages in length.

(iii) The last page of the supplemental *pro se* petition shall contain the name and signature of the client.

(e) A supplemental *pro se* petition for review is the client's product; therefore, if the client requests assistance in preparing the petition, counsel's obligation shall be limited to correcting obvious typographical errors, preparing copies of the petition for review as needed, serving the appropriate parties, and filing the original petition with the court. If the client prepares and files the supplemental *pro se* petition without the assistance of counsel, in addition to serving all other parties to the appeal as required by ORAP 9.05(3)(b), the client shall serve a copy of the petition on counsel.

(f) The provision of ORAP 16.15(1) requiring that all electronic filings be text-searchable does not apply to a *pro se* supplemental petition for review filed under this subsection.

(3) *Pro Se* Petitions for Review

(a) A client represented by court-appointed counsel on appeal, whose counsel has decided that a petition for review should not be filed, may file a *pro se* petition for review.

(b) The client shall file and submit the *pro se* petition for review pursuant to ORAP 9.05(2).

(c) If the client is filing a *pro se* petition for review pursuant to subparagraph (d)(i) of this rule, the cover of the petition shall contain a statement that the petition replicates all or part of the supplemental *pro se* brief filed in the Court of Appeals.

(d) Content.

(i) If the client previously filed a supplemental *pro se* brief in the Court of Appeals under ORAP 5.92, the client may submit, as the client's supplemental *pro se* petition for review, all or part of the supplemental *pro se* brief filed in the Court of Appeals.

(ii) Otherwise, the client shall prepare the *pro se* petition for review, as nearly as practicable, in the proper form and with the proper content, as required by ORAP 9.05(3) and (4), except that the petition must not exceed either 5,000 words or, alternatively, 15 pages in length.

(iii) The last page shall contain the name and signature of the client.

(e) In addition to serving all other parties to the appeal as required by ORAP 9.05(3)(b), the client shall serve a copy of the petition on counsel.

(f) The provision of ORAP 16.15(1) requiring that all electronic filings be text-searchable does not apply to a *pro se* petition for review filed under this subsection.

¹ "*Pro se*" means "for oneself" or "on one's own behalf." A supplemental *pro se* petition

for review filed under subsection (2) of this rule, and also a *pro se* petition filed under subsection (3) of this rule, is the product of the party themselves, and not of the attorney representing the party.

RULES AS AMENDED (Proposed 3/4/24):

**Rule 5.90
"BALFOUR" BRIEFS FILED
BY COURT-APPOINTED COUNSEL**

(1) If counsel appointed by the court to represent an indigent defendant in a criminal case on direct appeal has thoroughly reviewed the record, has discussed the case with trial counsel and the client, and has determined that the case does not raise any arguably meritorious issues, counsel shall file an opening brief with two sections:

(a) Section A of the brief shall contain:

(i) A statement of the case, including a statement of the facts of the case. If the brief contains a Section B with one or more claims of error asserted by the client, the statement of facts shall include facts sufficient to put the claim or claims of error in context.

(ii) A description of any demurrer or significant motion filed in the case, including, but not limited to, a motion to dismiss, a motion to suppress and a motion *in limine*, and the trial court's disposition of the demurrer or motion.

(iii) A statement that the case is being submitted pursuant to this rule, that counsel has thoroughly reviewed the record and discussed the case with trial counsel and the client, and that counsel has not identified any arguably meritorious issue on appeal. If the brief does not contain a Section B, counsel also shall state that counsel contacted the client, gave the client reasonable opportunity to identify a claim or claims of error, and that the client did not identify any claim of error for inclusion in the brief.

(iv) Counsel's signature.

(b) (i) Section B of the brief is the client's product and may contain any claim of error that the client wishes to assert. The client shall attempt to state the claim and any argument in support of the claim as nearly as practicable in proper appellate brief form. Section B of the brief shall not exceed 48 pages in length. The last page of Section B of the brief shall

Proposal # 8 -- ORAP 5.90(5), 5.92, ORAP 9.05 -- Petitions for Review and Supplemental Pro Se Briefs and Balfour Briefs

contain the name and signature of the client.

(ii) Counsel's obligation with respect to Section B of the brief shall be limited to correcting obvious typographical errors, preparing copies of the brief as needed, serving the appropriate parties, and filing the original brief ~~and the appropriate number of copies~~ with the court.

(2) A case in which appellant's opening brief is prepared and filed under this rule shall be submitted without oral argument, unless otherwise ordered by the court.

(3) On reviewing the record and the briefs filed by the parties, if the court identifies one or more arguably meritorious issues in the case, the court shall notify appellant's counsel of the issue or issues so identified. Appellant's counsel shall have 28 days after the date of the court's notice to file a supplemental opening brief addressing those issues. In addition to addressing the issue or issues identified by the court, counsel may address any other arguably meritorious issue counsel has identified. Respondent shall have 28 days after appellant files a supplemental opening brief to file a response or supplemental answering brief addressing the issues raised in the supplemental opening brief.

(4) In a case other than a criminal case on direct appeal, court-appointed counsel who determines that there are no meritorious issues on appeal may submit a brief under this rule, in which case the matter will be submitted without oral argument, unless otherwise ordered by the court.

See generally State v. Balfour, 311 Or 434, 451-53, 814 P2d 1069 (1991).

Rule 5.92

SUPPLEMENTAL *PRO SE* BRIEFS

(1) When a client is represented by court-appointed counsel and the client is dissatisfied with the brief that counsel has filed, within 28 days after the filing of the brief, either the client or counsel may move the court for leave to file a supplemental *pro se* brief.¹ If the client files the motion, in addition to serving all other parties to the case, the client shall serve counsel with a copy of the motion. If counsel files the motion, in addition to serving all other parties to the case, counsel shall serve the client with a copy of the motion. Whoever files the motion may tender the proposed supplemental *pro se* brief along with the motion.

Proposal # 8 -- ORAP 5.90(5), 5.92, ORAP 9.05 -- Petitions for Review and Supplemental Pro Se Briefs and Balfour Briefs

(2) The client shall attempt to prepare a supplemental *pro se* brief as nearly as practicable in proper appellate brief form. The brief shall identify questions or issues to be decided on appeal as assignments of error identifying precisely the legal, procedural, factual, or other ruling that is being challenged.² The last page of the brief shall contain the name and signature of the client. Unless the court orders otherwise, the statement of the case, including the statement of facts, and the argument together shall be limited to five pages.

(3) If the supplemental *pro se* brief includes an excerpt of record, the excerpt must contain only the information included in [ORAP 5.50\(2\)](#),³ and only if that material is not included in the appellant's opening brief. If the supplemental *pro se* brief includes an appendix, it must comply with the appendix rules in [ORAP 5.52](#) and shall not contain any confidential material.

(4) A supplemental *pro se* brief is the client's product; therefore, if the client requests assistance in preparing the brief, counsel's obligation shall be limited to correcting obvious typographical errors, preparing copies of the brief, serving the appropriate parties, and filing the original brief with the court. If the client prepares and files the brief without the assistance of counsel, in addition to serving all other parties to the appeal, the client shall serve a copy of the brief on counsel.

(5) The provision of ORAP 16.15(1) requiring that all electronic filings be text-searchable does not apply to a brief filed under this rule.

¹ "*Pro se*" means "for oneself" or "on one's own behalf." A supplemental *pro se* brief is the product of the party ~~himself or herself~~ themselves, and not of the attorney representing the party.

² See [ORAP 5.45](#), which describes requirements for assignments of error and argument.

³ See [ORAP 5.50\(2\)](#) (indicating that an excerpt of record must contain "[t]he judgment or order on appeal or judicial review" and "[a]ny written or oral rulings by the lower tribunal or agency addressing the issues presented by the assignments of error").

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

[No proposed amendments, included for information only]

(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, 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](#).

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

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

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

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

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

(iii) If a petition for review is filed after the filing of a timely petition for reconsideration, the petition for review will not be submitted to the Supreme Court until the Court of Appeals issues its written disposition of the petition for reconsideration.

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

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

(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:

(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:

(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

(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.

(4) Contents of Petition for Review

The petition shall contain in order:

(a) A short statement of the historical and procedural facts relevant to the review, but facts correctly stated in the decision of the Court of Appeals should not be restated.

(b) Concise statements of the legal question or questions presented on review and of the rule of law that the petitioner on review proposes be established, if review is allowed.

(c) A statement of specific reasons why the legal question or questions presented on review have importance beyond the particular case and require decision by the Supreme Court.⁴

(d) If desired, and space permitting, a brief argument concerning the legal question or questions presented on review.

(e) A copy of the decision of the Court of Appeals, including the court's opinion and any concurring and dissenting opinions.

¹ See generally [ORS 2.520](#). See [ORAP 7.25\(2\)](#) regarding information that must be included in a motion for extension of time to file a petition for review.

² See [Appendix 9.05](#).

³ See [ORAP 9.17](#) regarding briefs on the merits.

⁴ See [ORAP 9.07](#) regarding the criteria considered by the Supreme Court when deciding whether to grant discretionary review. An assertion of the grounds on which the decision of the Court of Appeals is claimed to be wrong, without more, does not constitute compliance with this paragraph.

Rule 9.06
"BALFOUR" AND PRO SE PETITIONS FOR REVIEW
FILED BY CLIENTS REPRESENTED BY COURT-APPOINTED COUNSEL

(1) "Balfour" Petitions for Review

(a) In any case in which the petitioner on review is represented by court-appointed counsel on appeal, and counsel filed a "Balfour" brief in the Court of Appeals under ORAP 5.90(1), counsel may submit a petition for review that contains a Section A that complies with [ORAP 9.05\(3\)\(a\)](#) and a Section B that is the client's product.

(b) Section A of the petition for review shall contain:

(i) A statement of historical and procedural facts, as required by [ORAP 9.05\(4\)\(a\)](#);

(ii) A statement that the petition for review is being submitted pursuant to this rule and that counsel has thoroughly reviewed the Court of Appeals decision and the record, has discussed the case with the client, and has not identified any arguably meritorious issue to raise in a petition;

(iii) If the client has filed a Section B pursuant to subparagraph (c)(i) of this rule, a statement that that Section B replicates Section B of the opening brief filed in the Court of Appeals; and

(iv) Counsel's signature.

(c) Section B of the petition for review is the client's product and may contain any legal question that the client wishes the court to review.

(i) The client may submit, as Section B of the petition, the Section B of the opening brief filed in the Court of Appeals.

(ii) If the client does not submit the Section B of the opening brief filed in the Court of Appeals, the client shall attempt to identify in Section B of the petition the legal question, proposed rule of law, and reasons the case presents a significant issue of law as nearly as practicable in proper petition form, as set out in ORAP 9.05(4)(b) through (d). A Section B filed under this subparagraph shall not exceed 15 pages in length.

(iii) The last page of Section B of the petition shall contain the name and signature of the client.

(d) Counsel's obligation with respect to Section B of the petition for review shall be limited to correcting obvious typographical errors, attaching the Court of Appeals opinion, as required by ORAP 9.05(4)(e), preparing copies of the petition as needed, serving the appropriate parties, and filing the original petition with the court.

(2) Supplemental *Pro Se* Petitions for Review

(a) A client represented by court-appointed counsel on appeal, who is dissatisfied with a petition for review that counsel has filed, may file a supplemental *pro se* petition for review¹ as set out in this subsection.

(b) If the client previously filed a supplemental *pro se* brief in the appeal under ORAP 5.92, the client may file a supplemental *pro se* petition for review without moving for leave to file. A supplemental *pro se* petition filed under this paragraph is due 14 days after the filing of the petition filed by counsel and shall contain a statement that the client previously filed a supplemental *pro se* brief in the Court of Appeals.

(c) If the client did not previously file a supplemental *pro se* brief in the appeal under ORAP 5.92, either the client or counsel may move the court for leave to file a supplemental *pro se* petition for review, due 14 days after the filing of the petition filed by counsel. If the client files the motion, in addition to serving all other parties to the case, the client shall serve counsel with a copy of the motion. If counsel files the motion, in addition to serving all other parties to the case, counsel shall serve the client with a copy of the motion. Whoever files the motion may tender the proposed supplemental *pro se* petition along with the motion.

(d) The client shall attempt to prepare a supplemental *pro se* petition for review, whether filed under paragraph (2)(b) or (c) of this rule, as nearly as practicable, in the proper form and with the proper content, as required by ORAP 9.05(3) and (4), except that the petition must not exceed either 5,000 words or, alternatively, 15 pages in length. The last page of the supplemental *pro se* petition shall contain the name and signature of the client.

(e) A supplemental *pro se* petition for review is the client's product; therefore, if the client requests assistance in preparing the petition, counsel's obligation shall be limited to correcting obvious typographical errors, preparing copies of the petition for review as needed, serving the appropriate parties, and filing the original petition with the court. If the client prepares and files the supplemental *pro se* petition without the assistance of counsel, in addition to serving all other parties to the appeal as required by ORAP 9.05(3)(b), the client shall serve a copy of the petition on counsel.

(f) The provision of ORAP 16.15(1) requiring that all electronic filings be text-searchable does not apply to a *pro se* supplemental petition for review filed under this subsection.

(3) *Pro Se* Petitions for Review

(a) A client represented by court-appointed counsel on appeal, whose counsel has decided that a petition for review should not be filed, may file a *pro se* petition for review.

(b) The client shall file and submit the *pro se* petition for review pursuant to ORAP 9.05(2).

(c) The client shall prepare the *pro se* petition for review, as nearly as practicable, in the proper form and with the proper content, as required by ORAP 9.05(3) and (4), except that the petition must not exceed either 5,000 words or, alternatively, 15 pages in length. The last page shall contain the name and signature of the client.

(d) In addition to serving all other parties to the appeal as required by ORAP 9.05(3)(b), the client shall serve a copy of the petition on counsel.

(e) The provision of ORAP 16.15(1) requiring that all electronic filings be text-searchable does not apply to a *pro se* petition for review filed under this subsection.

¹ "Pro se" means "for oneself" or "on one's own behalf." A supplemental *pro se* petition for review filed under subsection (2) of this rule, and also a *pro se* petition filed under subsection (3) of this rule, is the product of the party themselves, and not of the attorney representing the party.

RULE AS AMENDED (Original):

[None provided. Below are the rules as currently written:]

Rule 5.90
"BALFOUR" BRIEFS FILED
BY COURT-APPOINTED COUNSEL

(1) If counsel appointed by the court to represent an indigent defendant in a criminal case on direct appeal has thoroughly reviewed the record, has discussed the case with trial counsel and the client, and has determined that the case does not raise any arguably meritorious issues, counsel shall file an opening brief with two sections:

(a) Section A of the brief shall contain:

(i) A statement of the case, including a statement of the facts of the case. If the brief contains a Section B with one or more claims of error asserted by the client, the statement of facts shall include facts sufficient to put the claim or claims of error in context.

(ii) A description of any demurrer or significant motion filed in the case, including, but not limited to, a motion to dismiss, a motion to suppress and a motion *in limine*, and the trial court's disposition of the demurrer or motion.

(iii) A statement that the case is being submitted pursuant to this rule, that counsel has thoroughly reviewed the record and discussed the case with trial counsel and the client, and that counsel has not identified any arguably meritorious issue on appeal. If the brief does not contain a Section B, counsel also shall state that counsel contacted the client, gave the client reasonable opportunity to identify a claim or claims of error, and that the client did not identify any claim of error for inclusion in the brief.

(iv) Counsel's signature.

(b) (i) Section B of the brief is the client's product and may contain any claim of error that the client wishes to assert. The client shall attempt to state the claim and any argument in support of the claim as nearly as practicable in proper appellate brief form. Section B of the brief shall not exceed 48 pages in length. The last page of Section B of the brief shall contain the name and signature of the client.

(ii) Counsel's obligation with respect to Section B of the brief shall be limited to correcting obvious typographical errors, preparing copies of the brief, serving the appropriate parties, and filing the original brief and the appropriate number of copies with the court.

(2) A case in which appellant's opening brief is prepared and filed under this rule shall be submitted without oral argument, unless otherwise ordered by the court.

(3) On reviewing the record and the briefs filed by the parties, if the court identifies one or more arguably meritorious issues in the case, the court shall notify appellant's counsel of the issue or issues so identified. Appellant's counsel shall have 28 days after the date of the court's notice to file a supplemental opening brief addressing those issues. In addition to addressing the issue or issues identified by the court, counsel may address any other arguably meritorious issue counsel has identified. Respondent shall have 28 days after appellant files a supplemental opening brief to file a response or supplemental answering brief addressing the issues raised in the supplemental opening brief.

(4) In a case other than a criminal case on direct appeal, court-appointed counsel who determines that there are no meritorious issues on appeal may submit a brief under this rule, in which case the matter will be submitted without oral argument, unless otherwise ordered by the court.

(5) In any case in which the appellant is represented by court-appointed counsel on appeal and counsel filed a brief in the Court of Appeals under subsection (1) of this rule, counsel may submit a petition for review that contains a Section A that complies with [ORAP 9.05\(3\)\(a\)](#) and a Section B that complies with paragraph (1)(b) of this rule.

See generally State v. Balfour, 311 Or 434, 451-53, 814 P2d 1069 (1991).

Rule 5.92
SUPPLEMENTAL *PRO SE* BRIEFS

(1) When a client is represented by court-appointed counsel and the client is dissatisfied with the brief that counsel has filed, within 28 days after the filing of the brief, either the client or counsel may move the court for leave to file a supplemental *pro se* brief.¹ If the client files the motion, in addition to serving all other parties to the case, the client shall serve counsel with a copy of the motion. If counsel files the motion, in addition to serving all other parties to the case, counsel shall serve the client with a copy of the motion. Whoever files the motion may tender the proposed supplemental *pro se* brief along with the motion.

(2) The client shall attempt to prepare a supplemental *pro se* brief as nearly as practicable in proper appellate brief form. The brief shall identify questions or issues to be decided on appeal as assignments of error identifying precisely the legal, procedural, factual, or other ruling that is being challenged.² The last page of the brief shall contain the name and signature of the client. Unless the court orders otherwise, the statement of the case, including the statement of facts, and the argument together shall be limited to five pages.

(3) If the supplemental *pro se* brief includes an excerpt of record, the excerpt must contain only the information included in [ORAP 5.50\(2\)](#),³ and only if that material is not included in the appellant's opening brief. If the supplemental *pro se* brief includes an appendix, it must comply with the appendix rules in [ORAP 5.52](#) and shall not contain any confidential material.

(4) A supplemental *pro se* brief is the client's product; therefore, if the client requests assistance in preparing the brief, counsel's obligation shall be limited to correcting obvious typographical errors, preparing copies of the brief, serving the appropriate parties, and filing the original brief with the court. If the client prepares and files the brief without the assistance of counsel, in addition to serving all other parties to the appeal, the client shall serve a copy of the brief on counsel.

(5) The provision of ORAP 16.15(1) requiring that all electronic filings be text-searchable does not apply to a brief filed under this rule.

¹ "*Pro se*" means "for oneself" or "on one's own behalf." A supplemental *pro se* brief is the product of the party himself or herself, and not of the attorney representing the party.

² See [ORAP 5.45](#), which describes requirements for assignments of error and argument.

³ See [ORAP 5.50\(2\)](#) (indicating that an excerpt of record must contain "[t]he judgment or order on appeal or judicial review" and "[a]ny written or oral rulings by the lower tribunal or agency addressing the issues presented by the assignments of error").

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, 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](#).

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

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

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

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

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

(iii) If a petition for review is filed after the filing of a timely petition for reconsideration, the petition for review will not be submitted to the Supreme Court until the Court of Appeals issues its written disposition of the petition for reconsideration.

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

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

(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:

(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:

(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

(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.

(4) Contents of Petition for Review

The petition shall contain in order:

(a) A short statement of the historical and procedural facts relevant to the review, but facts correctly stated in the decision of the Court of Appeals should not be restated.

(b) Concise statements of the legal question or questions presented on review and of the rule of law that the petitioner on review proposes be established, if review is allowed.

(c) A statement of specific reasons why the legal question or questions presented on review have importance beyond the particular case and require decision by the Supreme Court.⁴

(d) If desired, and space permitting, a brief argument concerning the
Proposal # 8 -- ORAP 5.90(5), 5.92, ORAP 9.05 -- Petitions for Review and
Supplemental Pro Se Briefs and Balfour Briefs

legal question or questions presented on review.

(e) A copy of the decision of the Court of Appeals, including the court's opinion and any concurring and dissenting opinions.

¹ See generally [ORS 2.520](#). See [ORAP 7.25\(2\)](#) regarding information that must be included in a motion for extension of time to file a petition for review.

² See [Appendix 9.05](#).

³ See [ORAP 9.17](#) regarding briefs on the merits.

⁴ See [ORAP 9.07](#) regarding the criteria considered by the Supreme Court when deciding whether to grant discretionary review. An assertion of the grounds on which the decision of the Court of Appeals is claimed to be wrong, without more, does not constitute compliance with this paragraph.

See [ORAP 5.90\(5\)](#) regarding filing a petition for review where a "Balfour" brief was filed on behalf of the appellant in the Court of Appeals.

ORAP COMMITTEE 2024
April 25 Materials

AMENDING RULE(S): Proposal # 9 -- ORAP 6.05, 6.20, 6.30, Appendix 6.05 --
Court of Appeals Pro Se Oral Argument Temporary Rules

PROPOSER: [Temporary rules to be made permanent.]

EXPLANATION:

WORKGROUP NOTES FOR APRIL 25

Judge Kamins reports that the workgroup has had some very productive discussions. They recommend that the Committee table this proposal for the next ORAP cycle to adopt a permanent rule that can incorporate hybrid arguments, which they hope will be well-established by then.

WORKGROUP NOTES FOR MARCH 20

Judge Kamins asks that the Committee pass the proposal for the April meeting. That will allow time to for the Court of Appeals' experiment with hybrid arguments this month, as a hybrid option may resolve some of the concerns with the rule.

ORIGINAL EXPLANATION

The following temporary rules were adopted for the Court of Appeals by CJO 22-07 on November 10, 2022, and are proposed to be made permanent.

RULE AS AMENDED:

Rule 6.05
REQUEST FOR ORAL ARGUMENT;
SUBMISSION WITHOUT ARGUMENT

(1) This rule applies to proceedings in the Court of Appeals.

(2) (a) The Administrator will send the parties notice of the date that a case is scheduled to be submitted to the court ("the submission date"). ~~Parties to the case may request oral argument by filing a "Request for Oral Argument" in the form illustrated in Appendix 6.05 and directed to the attention of the court's calendar clerk. If a party files a timely request for oral argument, the case will be argued on the submission date and all parties who have filed a brief~~

Proposal # 9 -- ORAP 6.05, 6.20, 6.30, Appendix 6.05 -- Court of Appeals Pro Se Oral
Argument Temporary Rules

may argue. If no party files a timely request for oral argument, the cause shall be submitted on the briefs on the submission date without oral argument, unless the court directs otherwise. The notice will include a form "Response to Notice of Submission" requesting the information described below. Within 14 days of receiving the notice, any party requesting oral argument must complete, file, and serve on every party to the appeal the form "Response to Notice of Submission." The information required by the form Response to Notice of Submission is the following:

- (i) that the party requests oral argument;
- (ii) the name of the attorney who will argue the case;
- (iii) whether the party requests in-person oral argument as described in ORAP 6.30(1)(a);
- (iv) whether the party has conferred with all other parties regarding in-person oral argument and, if so, whether any party objects.

(b) Submission will occur as follows~~A party wanting oral argument must file the request for oral argument and serve it on every other party to the appeal within the number of days specified in this subsection after the date the notice from the Administrator:~~

- (i) If no party files a timely request for oral argument, the case shall be submitted on the briefs on the submission date without oral argument, unless the court directs otherwise.
- (ii) Except as otherwise provided in subparagraph (iii), if a timely request for oral argument is made, then the case will be set for remote argument pursuant to ORAP 6.30 on the submission date and all parties who have filed a brief may argue.
- (iii) Unless the court determines that remote argument better meets the needs of the court, (a) if a party submits a timely request for in-person argument, and certifies that the party has conferred with all other parties and that no party objects to in-person argument, or (b) if all parties submit requests for in-person argument, then the case will be set for in-person argument pursuant to ORAP 6.30 on the submission date and all parties who have filed a brief may argue.
- (iv) Notwithstanding subparagraph (iii), a party may move the court for an order that an oral argument should proceed in person. The motion must be filed within seven days after the deadline for filing a Response to Notice of Submission and must explain the circumstances that support the request and demonstrate good cause for arguing in-person; good cause does not include a mere preference for in-

person argument. Any party may file a response to the motion; the response must be filed within seven days after the filing of the motion.

~~(i) — On appeal in juvenile dependency (including termination of parental rights) and adoption cases within the meaning of ORAP 10.15, and on judicial review in land use cases as defined in ORAP 4.60(1)(b), 14 days after the date of the notice;~~

~~(ii) — In all other cases, 28 days after the date of the notice.~~

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

~~(34)~~ Notwithstanding subsection (2) of this rule, if a self-represented party files a brief, the case will be submitted without argument by any party. An attorney representing himself or herself is not considered to be a self-represented party for the purpose of this rule.

~~(45)~~ Notwithstanding subsection (2) of this rule, when a respondent submits an answering brief confessing error as to all assignments of error and not objecting to the relief sought in the opening brief, the respondent shall so inform the court by letter when the brief is filed or at any time thereafter. On receipt of respondent's notice that a brief confesses error, the case will be submitted without oral argument. The appellant may by letter bring to the court's attention that a respondent's brief appears to confess error. If the court concurs, the case will be submitted without oral argument.

Rule 6.20

ARGUMENT IN SALEM, ~~AND OTHER LOCATIONS, AND BY REMOTE MEANS~~

The Court of Appeals will set most ~~eases for in-person~~ oral arguments in Salem, but, pursuant to Chief Justice Order ~~19-05322-020~~, dated ~~September 17, 2019~~October 7, 2022, the court may set cases for oral argument in other locations throughout the state, and, pursuant to Chief Justice Order 22-012, dated June 23, 2022, ~~which includes setting~~may set cases for oral argument by remote means. For purposes of this rule, "remote means" refers to an oral argument conducted by video conference with all parties and judges appearing remotely.

See ORS 2.560(1) and ORS 1.085(2).

Rule 6.30

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

(1) For purposes of this rule,

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

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

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

(a) ~~Except as otherwise provided in ORAP 6.05(2)(b)(iii) or ORAP 6.05(3), Except for cases designated as expedited under ORAP 4.60 and ORAP 10.15, within 21 days after the filing of an answering brief, the parties may file a joint notice that they are amenable to oral argument by remote means. Unless the court directs otherwise, when a joint notice under this rule has been filed and a party files a timely request for oral argument under ORAP 6.05(2), the case will be scheduled for argument by remote means.~~

~~(b) — Notwithstanding paragraph (a) of this subsection the court may direct that oral argument in a case or set of cases occur by remote means, which includes setting remote oral argument sessions in the ordinary course or directing that oral arguments occur remotely in response to inclement weather or other unforeseen circumstances. If the court directs that an oral argument occur by remote means, a party may request an in-person argument as follows:~~

~~(i) A party may move the court for an order that an oral argument should proceed in person. The motion must be filed at least 14 days before the scheduled date of the oral argument. The motion must state the scheduled date and time of the oral argument and explain the circumstances that support the request.~~

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

~~(iii) The court may, for good cause shown, shorten the time for filing a motion or response.~~

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

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

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

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

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

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

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

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

¹ See Chief Justice Order ~~19-05322-020~~ (providing that the principal location for the sitting of the Court of Appeals is currently ~~1162 Court Street NE~~ 1163 State Street, Salem, OR 97301) or any subsequent order of the Chief Justice that amends or supersedes that order.

APPENDIX 6.05

Illustration for ORAP 6.05

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

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

REQUEST FOR ORAL ARGUMENT

To the Calendar Clerk for the Court of Appeals:

_____[Appellant/Respondent/Other Party] hereby requests that the above-captioned case, scheduled to be submitted to the court on ___[date]___, be scheduled for oral argument before the Oregon Court of Appeals on that date. The name and bar number of the attorney who will appear on behalf of [appellant / respondent] at oral argument are ___[name]___, ___[bar number]___.

Date _____

Attorney for [Appellant/Respondent/Other Party]
[Sign and print/type name, bar number,
address, telephone number, and email address]

ORAP COMMITTEE 2024
April 25 Materials

AMENDING RULE(S): Proposal # 11 -- ORAP 8.35 -- Courtroom Coverage of Appellate Court Proceedings

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

UPDATED INFO: **Updated April 12, 2024**
(submitted by Lisa Norris-Lampe)

EXPLANATION:

Updated explanation (from Lisa Norris-Lampe, 4/12/24):

Please review this updated proposed amendment of ORAP 8.35 -- which replaces the original version circulated for the 2/22/24 ORAP meeting -- together with the explanation below. (Original background information about the reason for the proposal follow this updated explanation.)

General Update Note and Feedback: After our February meeting, I worked with OJD Chief Information Office, Todd Sprague, to further update the proposal, which Daniel Parr reviewed. We then sent it to the Oregon Bar Press Broadcasters Council for review and feedback. The Council reviewed the updated proposal at a meeting earlier this month and reported back that it had no comments or concerns.

Specific Update Notes: Following is an updated summary of all the proposed changes (as originally proposed but then also as updated since the 2/22/24 meeting), as compared to the current rule:

- **Subsection (1)** now includes several definitions, added to ease readability throughout the rule (note that electronic writing, recording, and transmission definitions are essentially identical to those in UTCR 3.180);
- **Subsection (2)** clarifies that the rule (essentially) has two parts:
 - Provisions relating to electronic writing, recording, and transmission (with one of those applying regardless of whether a proceeding is conducted in a courtroom or remotely); and
 - Provisions relating to coverage of proceedings conducted *within a courtroom using certain equipment* ("coverage using equipment")

(in essence, these provisions comprise the current rule, but with updates throughout).

All persons -- media or otherwise -- are subject to the first group of provisions, but only persons providing coverage of in-courtroom proceedings using certain equipment are subject to the second group.

- **Subsection (3)** duplicates several provisions of current UTCR 3.180 (adapted as needed for appellate court proceedings) -- namely, that, prior permission is required (for any person) before:
 - Electronically recording (regardless of where conducted);
 - Electronically transmitting any electronic recording from within a courtroom; or
 - Electronically writing with a courtroom or transmitting such a writing from within a courtroom (with exceptions for attorneys, see **subsection (4)**).

- **Subsection (5)** sets out what is now most of the current rule, regarding "coverage using equipment" of proceedings held within a courtroom, with several updates (which we characterized to the Council as nonsubstantive):
 - Throughout, the rule now focuses on the equipment being used, as opposed to being framed as a "media coverage" rule (the word "media" no longer appears); and
 - Throughout, the rule modernizes outdated wording referring to various equipment that may be used to cover appellate court proceedings (in the courtroom).

For ease of reading, two "updated" versions are set out below: **(1)** A more traditional "compare" version (showing new text in **{braces/bold/underscored}**; deleted text in *[brackets/italics]*); and **(2)** A "clean" version, if approved.

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

Two sources of authority currently govern electronic writing in, and electronic recording and media coverage of, appellate court proceedings:

- (1) ORAP 8.35, pertaining to media coverage in both courts; and
- (2) Supreme Court Order (SCO) 19-043, pertaining to electronic recording and

electronic writing on Oregon Supreme Court premises (and adjacent areas), but limited to proceedings before the Oregon Supreme Court (not including proceedings before the Court of Appeals).

The trial courts also have long had a "media" rule -- UTCR 3.180 -- which has been amended three times over the last six years, now titled as an "Electronic Recording and Writing" rule (and still including media-related provisions).

When it adopted SCO 19-043 (in July 2019), the Supreme Court applied then-existing trial court provisions pertaining to electronic recording and writing to Supreme Court proceedings. SCO 19-043 otherwise was intended to be a transitional order -- during the Supreme Court's temporary move to a different location during the 2019-2023 building restoration project -- with a more comprehensive ORAP update to follow in 2024.¹

Meanwhile, UTCR 3.180 was most recently amended effective August 2023, to incorporate the concept of electronic transmission as well as writing and recording. Simply stated, in new subsection (2), UTCR 3.180 prohibits the following activities in relation to court proceedings (unless permission is granted in advance): **(1)** electronic recording, regardless of whether proceedings are in-person or remote; **(2)** electronic writing within a courtroom; **(3)** electronic transmission of either an electronic recording or writing from within a courtroom; and, **(4)** if remotely participating in or viewing a remote proceeding, electronically transmitting any electronic writing directly and specifically to a witness until the witness is excused by the court. UTCR 3.180 also has been restructured so that the generally applicable electronic recording, writing, and transmission provisions are set out first, followed by the more specific media provisions.²

Issues: **(1)** For transparency purposes, it is preferable if all restrictions that apply to court proceedings appear together in the ORAPs, instead of some restrictions appearing in the ORAPs and others in a Supreme Court Order; **(2)** for modernization purposes, the current "media rule" in the ORAPs should be updated -- akin to current UTCR 3.180 -- to acknowledge the proliferation of electronic writing, recording, and transmission capabilities by persons not affiliated with media broadcasting; **(3)** for consistency and public understanding, it seems preferable if the same rules apply to both appellate courts, and also that the same rules -- to the extent applicable or practicable -- apply to the

¹ SCO 19-043, set out as Attachment A, contains other provisions not related to court proceedings -- namely, relating to photography and recordings in and around the Supreme Court building (not in proceedings). If ORAP 8.35 is ultimately amended as proposed (or at least in some related manner), then a new Supreme Court Order could be written to retain the parts of SCI 19-043 not incorporated into ORAP 8.35.

² UTCR 3.180 is set out as Attachment B.

appellate courts as the trial courts.

Solution: Rewrite ORAP 8.35 to (1) incorporate provisions of SCO 19-043 that pertain to electronic recording and writing; (2) update those same provisions to make them consistent -- as appropriate -- with the trial court rules (most notably, including a new concept of "electronic transmission" that is separate from electronic writing or electronic recording); (3) update those same provisions to make them applicable to the Court of Appeals as well as the Supreme Court; (4) restructure the rule to set out the generally applicable provisions first, followed by the more specific media provisions; and (5) modernize the media provisions (*e.g.*, acknowledge concept of internet broadcasting, remove references to "videotape").

RULE AS AMENDED (PROPOSED, SHOWING CHANGES) (Updated, 4/12/24):

New text in **{braces/bold/underscored}**; deleted text in [*brackets/italics*].

Rule 8.35 **{ELECTRONIC RECORDING, WRITING, AND TRANSMISSION,
AND }[MEDIA] COVERAGE {USING EQUIPMENT}[OF APPELLATE
COURT PROCEEDINGS]**

(1) As used in this rule,

{(a) "Courtroom" means a formal courtroom or an alternative physical location being used as a courtroom.

(b) "Coverage using equipment" means coverage of proceedings conducted within a courtroom by use of still photography, radio, television, or other audio or video recording technology.

(c) "Electronic recording" includes, but is not limited to, audio recording, video recording, and taking still photography by cell phone, tablet, computer, camera, or other means.

(d) "Electronic transmission" means to send an electronic recording or writing, including but not limited to transmission by email, text, or instant message; live streaming; or posting to a social media or networking service.

(e) "Electronic writing" means the taking of notes or otherwise writing by electronic means and includes, but is not limited to, the use of word processing software and the composition of text, emails, and instant

messages.

(f) "**J**[*j*]udge presiding in a proceeding" means the Chief Justice of the Supreme Court **{or designee;}**[*,*] the Chief Judge of the Court of Appeals **{or designee;}**[*,*] or the justice or judge presiding in a public proceeding **{before}**[*in*] the Supreme Court or Court of Appeals **{or designee;}**[*,*] as appropriate.

{(g) "Proceedings" means public judicial proceedings conducted by the Supreme Court or the Court of Appeals. When proceedings are conducted in the courtroom in the Oregon Supreme Court Building, any provision of this rule that limits activity "within a courtroom" applies to any simultaneously displayed video feed to a public viewing area in the State of Oregon Law Library.}

(2) The judge presiding in a proceeding shall have the authority and responsibility to control the conduct of proceedings before the court, **{ensure}**[*insure*] decorum and prevent distractions, and **{ensure}**[*insure*] the fair administration of justice in proceedings before the court. Subject to that authority and responsibility,

{(a) Electronic writing in, and electronic recording and electronic transmission of, appellate proceedings may be permitted, as provided in subsections (3) and (4) of this rule; and}

{(b) [radio, television, and still photography c]}{C}overage **{using equipment} of [*public judicial*] proceedings [*in the appellate courts*] shall be **{permitted}**[*allowed*], as provided in subsection (5) of [*in accordance with*] this rule.**

(3) **{Except with the express prior permission of the judge presiding in a proceeding, and except as otherwise provided in subsection (4) of this rule, a person may not:}**

{(a) Electronically record any court proceeding;}

{(b) Electronically transmit any electronic recording from within a courtroom during a proceeding;}

{(c) Engage in electronic writing within a courtroom during a proceeding; or}

{(d) Electronically transmit any electronic writing from within a courtroom during a proceeding.}

(4) Subsections (3)(c) and (d) of this rule do not apply to attorneys or agents of attorneys, unless otherwise ordered by the judge presiding in a proceeding.

{5}[3]} Coverage using equipment shall be permitted as set out in this subsection.

(a) Prior permission for electronic recording, electronic writing, and electronic transmission is required, as set out in subsection (3) of this rule.

(b) Where available, audio pickup [*for all media purposes*] shall be accomplished from existing audio systems present in the courtroom, except if the audio pickup is attached to and operated as part of a television or video[tape] camera. If no technically suitable audio system exists in the courtroom, microphones and related wiring essential for **{purposes of coverage by equipment}**[*media purposes*] shall be unobtrusive and shall be located in places designated in advance of the proceeding by the judge presiding in the proceeding.

[(4) {c}] One still photographer, utilizing not more than two still cameras and related equipment, and one television or video[tape] camera operator{,} shall be permitted[*to cover any public proceeding in an appellate court*]. The judge presiding in the proceeding shall designate:

[(a) {i}] **{A particular location}**[*Where*] in the courtroom **{where}** the photographer or television or video[tape] camera operator shall be positioned; and

[(b) {ii}] **A particular location}**[*Where*] outside the courtroom **{where any}** video[tape] recording equipment that is not part of the television or video[tape] camera shall be positioned.

[(5) {d}] Microphones and cameras shall be placed in the courtroom before proceedings each day or during a recess{,} and, once positioned, shall not be moved during the proceeding. Microphones and cameras shall be removed only after adjournment of proceedings each day or during a recess. **{Persons engaging in coverage using equipment}**[*Broadcast media representatives*] shall not move about the courtroom while proceedings are in session.

[(6) {e} (i)] Audio and photographic equipment that produces distracting sound or light{, **including**} [*shall not be used, nor shall*] artificial lighting [*device*] of any kind{, **shall not**} be used. **{Persons engaging in**

coverage using equipment [*Broadcast media representatives*] shall eliminate all excessive noise while in the courtroom^{,}[;] e.g., any equipment coverings [*or cassette cases*] should be removed or opened before being brought into the courtroom^{,} and may not be replaced or closed inside the courtroom. **Video** [*Television film magazines (as distinct from videotape)*] and still camera **digital storage media,** film^{,} or lenses shall not be changed in the courtroom except during a recess.

- [(b)] **{(ii)}** The judge presiding in the proceedings may require any **person or representative of an entity seeking to engage in coverage using equipment** [*media representative intending to cover the proceeding*] to demonstrate adequately in advance of the proceeding that the equipment **to** [*that will*] be used meets the light and sound standards of this rule.
- [(7)] **{(f)}** "Pooling" arrangements required by the limitations of this rule on [*media*] equipment and personnel shall be the sole responsibility of the **persons or entities seeking to engage in coverage using equipment** [*media*]^{,} without calling on the judge presiding in the proceeding to mediate any dispute as to the appropriate representative or equipment authorized to cover a particular proceeding. In the absence of advance [*media*] agreement on disputed equipment or personnel issues, the judge presiding in the proceeding shall exclude all [*radio, television and still photography*] coverage **by equipment, as defined in subsection (1)(b) of this rule**.
- [(8)] **{(g)}** **Persons engaging in coverage by equipment who are** [*Media representatives*] attending an^{y} [*appellate court*] proceeding shall be dressed so as not to detract from the dignity of the court and may be removed from the courtroom for failure to wear appropriate attire.

RULE AS AMENDED (CLEAN) (Updated, 4/12/24):

Rule 8.35 ELECTRONIC RECORDING, WRITING, AND TRANSMISSION, AND COVERAGE USING EQUIPMENT

- (1) As used in this rule,
- (a) "Courtroom" means a formal courtroom or an alternative physical location being used as a courtroom.
 - (b) "Coverage using equipment" means coverage of proceedings conducted within a courtroom by use of still photography, radio, television, or other audio or video recording technology.
 - (c) "Electronic recording" includes, but is not limited to, audio recording, video recording, and taking still photography by cell phone, tablet, computer, camera, or other means.
 - (d) "Electronic transmission" means to send an electronic recording or writing, including but not limited to transmission by email, text, or instant message; live streaming; or posting to a social media or networking service.
 - (e) "Electronic writing" means the taking of notes or otherwise writing by electronic means and includes, but is not limited to, the use of word processing software and the composition of text, emails, and instant messages.
 - (f) "Judge presiding in a proceeding" means the Chief Justice of the Supreme Court or designee; the Chief Judge of the Court of Appeals or designee; or the justice or judge presiding in a public proceeding before the Supreme Court or Court of Appeals or designee; as appropriate.
 - (g) "Proceedings" means public judicial proceedings conducted by the Supreme Court or the Court of Appeals. When proceedings are conducted in the courtroom in the Oregon Supreme Court Building, any provision of this rule that limits activity "within a courtroom" applies to any simultaneously displayed video feed to a public viewing area in the State of Oregon Law Library.

- (2) The judge presiding in a proceeding shall have the authority and responsibility to control the conduct of proceedings before the court, ensure decorum and prevent distractions, and ensure the fair administration of justice in proceedings before the court. Subject to that authority and responsibility,
 - (a) Electronic writing in, and electronic recording and electronic transmission of, appellate proceedings may be permitted, as provided in subsections (3) and (4) of this rule; and
 - (b) Coverage using equipment of proceedings shall be permitted, as provided in subsection (5) of this rule.
- (3) Except with the express prior permission of the judge presiding in a proceeding, and except as otherwise provided in subsection (4) of this rule, a person may not:
 - (a) Electronically record any court proceeding;
 - (b) Electronically transmit any electronic recording from within a courtroom during a proceeding;
 - (c) Engage in electronic writing within a courtroom during a proceeding; or
 - (d) Electronically transmit any electronic writing from within a courtroom during a proceeding.
- (4) Subsections (3)(c) and (d) of this rule do not apply to attorneys or agents of attorneys, unless otherwise ordered by the judge presiding in a proceeding.
- (5) Coverage using equipment shall be permitted as set out in this subsection.
 - (a) Prior permission for electronic recording, electronic writing, and electronic transmission is required, as set out in subsection (3) of this rule.
 - (b) Where available, audio pickup shall be accomplished from existing audio systems present in the courtroom, except if the audio pickup is attached to and operated as part of a television or video camera. If no technically suitable audio system exists in the courtroom, microphones and related wiring essential for purposes of coverage by equipment shall be unobtrusive and shall be located in places designated in advance of the proceeding by the judge presiding in the proceeding.

- (c) One still photographer, utilizing not more than two still cameras and related equipment, and one television or video camera operator, shall be permitted. The judge presiding in the proceeding shall designate:
 - (i) A particular location in the courtroom where the photographer or television or video camera operator shall be positioned; and
 - (ii) A particular location outside the courtroom where any video recording equipment that is not part of the television or video camera shall be positioned.
- (d) Microphones and cameras shall be placed in the courtroom before proceedings each day or during a recess, and, once positioned, shall not be moved during the proceeding. Microphones and cameras shall be removed only after adjournment of proceedings each day or during a recess. Persons engaging in coverage using equipment shall not move about the courtroom while proceedings are in session.
- (e)
 - (i) Audio and photographic equipment that produces distracting sound or light, including artificial lighting of any kind, shall not be used. Persons engaging in coverage using equipment shall eliminate all excessive noise while in the courtroom, *e.g.*, any equipment coverings should be removed or opened before being brought into the courtroom, and may not be replaced or closed inside the courtroom. Video and still camera digital storage media, film, or lenses shall not be changed in the courtroom except during a recess.
 - (ii) The judge presiding in the proceedings may require any person or representative of an entity seeking to engage in coverage using equipment to demonstrate adequately in advance of the proceeding that the equipment to be used meets the light and sound standards of this rule.
- (f) "Pooling" arrangements required by the limitations of this rule on equipment and personnel shall be the sole responsibility of the persons or entities seeking to engage in coverage using equipment, without calling on the judge presiding in the proceeding to mediate any dispute as to the appropriate representative or equipment authorized to cover a particular proceeding. In the absence of advance agreement on disputed equipment or personnel issues, the judge presiding in the proceeding shall exclude all coverage by equipment, as defined in subsection (1)(b) of this rule.

- (g) Persons engaging in coverage by equipment who are attending any proceeding shall be dressed so as not to detract from the dignity of the court and may be removed from the courtroom for failure to wear appropriate attire.

RULE AS AMENDED (Original):

New text in **{braces/bold/underscored}**; deleted text in [*brackets/italics*].

Rule 8.35 **{ELECTRONIC RECORDING, WRITING, AND TRANSMISSION, AND}** MEDIA COVERAGE OF APPELLATE COURT PROCEEDINGS

(1) As used in this rule,

{(a) "Courtroom media coverage" means coverage of proceedings by radio, television, broadcast internet, or still photography.

{(b) "Proceedings" means public judicial proceedings conducted by the Supreme Court or the Court of Appeals. When proceedings are conducted in the Oregon Supreme Court courtroom, any provision of this rule that limits activity "within a courtroom" applies to any simultaneously displayed video feed to a public viewing area in the State of Oregon Law Library.

{(b)} "{J}[j]udge presiding in a proceeding" means the Chief Justice of the Supreme Court **{or designee;}[,] the Chief Judge of the Court of Appeals **{or designee;}**[,] or the justice or judge presiding in a public proceeding **{before}**[*in*] the Supreme Court or Court of Appeals **{or designee;}**[,] as appropriate.**

{(c) "Electronic recording" includes, but is not limited to, video recording, audio recording, and still photography by cell phone, tablet, computer, camera, recorder, or other means.

{(d) "Electronic writing" means the taking of notes or otherwise writing by electronic means and includes, but is not limited to, the use of word processing software and the composition of text, emails, and instant messages.

{(e) "Electronic transmission" means to send an electronic recording or

writing, including but not limited to transmission by email, text, or instant message; live streaming; or posting to a social media or networking service.

- (2) The judge presiding in a proceeding shall have the authority and responsibility to control the conduct of proceedings before the court, **{ensure}***[insure]* decorum and prevent distractions, and **{ensure}***[insure]* the fair administration of justice in proceedings before the court. Subject to that authority and responsibility,

{(a) Electronic writing in, and electronic recording and electronic transmission of, proceedings may be permitted, as provided in subsections (3) and (4) of this rule; and

{(b) Courtroom media *[radio, television, and still photography]* coverage of *[public judicial]* proceedings *[in the appellate courts]* shall be **{permitted}***[allowed]*, **as provided in subsection (5) of***[in accordance with]* this rule.

- (3) **{Except with the express prior permission of the judge presiding in a proceeding, and except as otherwise provided in subsections (4) and (5) of this rule, a person may not:**

(a) Electronically record any court proceeding;

(b) Electronically transmit any recording from within a courtroom during a proceeding;

(c) Engage in electronic writing within a courtroom during a proceeding;
or

(d) Electronically transmit any electronic writing from within a courtroom during a proceeding.

- (4) Subsections (3)(c) and (d) of this rule do not apply to attorneys or agents of attorneys, unless otherwise ordered by the judge presiding in a proceeding.**

{5}{3}] Courtroom media coverage shall be permitted as set out in this subsection.

(a) Prior permission is required, as set out in subsection (3) of this rule.

(b) Where available, audio pickup for all media purposes shall be accomplished from existing audio systems present in the courtroom, except if the audio

pickup is attached to and operated as part of a television or video[tape] camera. If no technically suitable audio system exists in the courtroom, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of the proceeding by the judge presiding in the proceeding.

[(4)] **{c}** One still photographer, utilizing not more than two still cameras and related equipment, and one television or video[tape] camera operator shall be permitted[*to cover any public proceeding in an appellate court*]. The judge presiding in the proceeding shall designate:

[(a)] **{i}** **{A particular location}**[*Where*] in the courtroom **{where}** the photographer or television or video[tape] camera operator shall be positioned; and

[(b)] **{ii}** **{A particular location}**[*Where*] outside the courtroom **{where any}** video[tape] recording equipment that is not part of the television or video[tape] camera shall be positioned.

[(5)] **{d}** Microphones and cameras shall be placed in the courtroom before proceedings each day or during a recess and, once positioned, shall not be moved during the proceeding. Microphones and cameras shall be removed only after adjournment of proceedings each day or during a recess. Broadcast media representatives shall not move about the courtroom while proceedings are in session.

[(6)] **{e} (i)}** Audio and photographic equipment that produces distracting sound or light shall not be used, nor shall artificial lighting device of any kind be used. Broadcast media representatives shall eliminate all excessive noise while in the courtroom; e.g., any equipment coverings or cassette cases should be removed or opened before being brought into the courtroom and may not be replaced or closed inside the courtroom. Television film magazines (as distinct from videotape) and still camera film or lenses shall not be changed in the courtroom except during a recess.

[(b)] **{ii}** The judge presiding in the proceedings may require any media representative intending to cover the proceeding to demonstrate adequately in advance of the proceeding that the equipment **{to}** [*that will*] be used meets the light and sound standards of this rule.

[(7)] **{f}** "Pooling" arrangements required by the limitations of this rule on media

equipment and personnel shall be the sole responsibility of the media~~{,}~~ without calling on the judge presiding in the proceeding to mediate any dispute as to the appropriate representative or equipment authorized to cover a particular proceeding. In the absence of advance media agreement on disputed equipment or personnel issues, the judge presiding in the proceeding shall exclude all ~~{media}~~ [*radio, television and still photography*] coverage.

- [(8)] ~~{(g)}~~ Media representatives attending an~~{y}~~ [*appellate court*]proceeding shall be dressed so as not to detract from the dignity of the court and may be removed from the courtroom for failure to wear appropriate attire.

ATTACHMENT A

IN THE SUPREME COURT OF THE STATE OF OREGON

In the Matter of Procedures for Electronic)	Supreme Court Order 19-043
Recording and Electronic Writing on)	
and Adjacent to Oregon Supreme Court)	ELECTRONIC RECORDING
Premises)	AND ELECTRONIC
)	WRITING ON AND
)	ADJACENT TO OREGON
)	SUPREME COURT PREMISES

On July 9, 2019, the Oregon Supreme Court considered and adopted the procedures set out below, concerning electronic recording and electronic writing on and adjacent to Oregon Supreme Court premises.

IT IS HEREBY ORDERED:

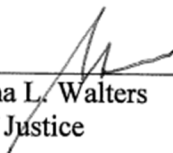
(1) Definitions

- (a) "Chief Justice" includes the Chief Justice and the Chief Justice's designee.
- (b) "Court proceedings" means case-related proceedings held before the Oregon Supreme Court, in the courtroom or simultaneously displayed via a video feed to a public viewing area in the State of Oregon Law Library.
- (c) "Electronic recording" includes, but is not limited to, video recording, audio recording, live streaming, and still photography by cell phone, tablet, computer, camera, recorder, or any other means.
- (d) "Electronic writing" means the taking of notes or otherwise writing by electronic means and includes, but is not limited to, the use of word processing software and the composition of texts, emails, instant messages, and postings to social media and networking services.
- (e) "Historic aspects or public areas of the building":
 - (i) In the Supreme Court Building located at 1163 State Street, Salem, OR 97301, "historic aspects or public areas of the building" means the public entry, the marble hallways and columns, the grand stairwell, the entry to and public areas of the State of Oregon Law Library, the public entry to the courtroom, the courtroom, and artwork hung in public areas. That term applies to no other area of the building, including the security station, security cameras, displayed floorplans, and the Appellate Records Services Division viewing room.

- (ii) In the temporary Supreme Court location at 2850 Broadway NE, Salem, OR 97303, "public areas of the building" means the courtroom, the State of Oregon Law Library, and artwork hung in public areas. That term applies to no other area of the building, including the security station and the Appellate Records Services Division viewing room.
- (2) Electronic Recording and Electronic Writing During Supreme Court Proceedings
 - (a) This subsection applies to activity during Supreme Court proceedings.
 - (b) Except as provided in subparagraph (d) below and as otherwise provided in ORAP 8.35 (media coverage of appellate court proceedings), electronic recording and electronic writing is not permitted during Supreme Court proceedings without express prior approval of the Chief Justice.
 - (c) Unless permitted in accordance with ORAP 8.35, and except as provided in subparagraph (d) below, even if a person is granted permission to engage in electronic recording or electronic writing, the person may not send any electronic recording or electronic writing during a Supreme Court proceeding.
 - (d) The prohibitions in subparagraphs (b) and (c) on electronic writing and sending an electronic recording or writing during Supreme Court proceedings do not apply to attorneys or to agents of attorneys, unless otherwise ordered by the Chief Justice.
- (3) Electronic Recording and Electronic Writing on Supreme Court Premises, Not in Supreme Court Proceedings
 - (a) This subsection applies to activity on Supreme Court premises other than in Supreme Court proceedings.
 - (b) Except as provided in subparagraph (e) below, video recording, audio recording, and still photography made or taken in historic aspects or public areas of the building is:
 - (i) permitted during court tours, public ceremonies and events, and weddings; and
 - (ii) otherwise permitted only with approval of the Chief Justice.
 - (c) Except as provided in subparagraph (e) below, video recording, audio recording, and still photography of or in any other area under the control and supervision of the court is permitted only with approval of the Chief Justice.

- (d) Except as provided in subparagraph (e) below, live streaming is permitted only with approval of the Chief Justice.
 - (e) Electronic recording of any person is not permitted without the permission of that person.
 - (f) Electronic writing is permitted in any public area of the building.
- (4) Electronic Recording of Supreme Court Justices in Adjacent Parking Lot
- (a) This subsection applies to activity in the parking lot adjacent to the Supreme Court Building or Supreme Court premises, including any sidewalk adjacent to both the building/premises and the parking lot.
 - (b) Unless a justice grants permission, electronic recording of that justice or that justice's vehicle is not permitted in the adjacent parking lot or sidewalk, as described in subparagraph (a).
- (5) If a person violates this order or any other requirement imposed by the Chief Justice or the court, the Chief Justice may, in addition to any other lawful sanction, order the person, and any organization with which the person is affiliated, to terminate electronic recording or electronic writing. If the person does not comply with that order, the Chief Justice may order that the person be excluded from the premises.
- (6) This rule does not apply to court personnel engaged in the performance of official duties.
- (7) This order is effective immediately.

Dated this 10th day of July, 2019.



Martha L. Walters
Chief Justice

ATTACHMENT B

3.180 ELECTRONIC RECORDING AND WRITING

- (1) As used in this rule:
 - (a) "Electronic recording" includes video recording, audio recording, and still photography by cell phone, tablet, computer, camera, tape recorder, or any other means. "Electronic recording" does not include "electronic writing."
 - (b) "Electronic writing" means the taking of notes or otherwise writing by electronic means and includes but is not limited to the use of word processing software and the composition of texts, emails, and instant messages.
 - (c) "Electronic transmission" means to send an electronic recording or writing, including but not limited to transmission by email, text, or instant message; live streaming; or posting to a social media or networking service.
- (2) Except with the express prior permission of the court, and except as provided in subsection (3) of this rule, a person may not:
 - (a) Electronically record in any area of the courthouse under the control and supervision of the court unless permitted by SLR pursuant to subsection (11)(a) of this rule;
 - (b) Electronically record any court proceeding;
 - (c) Electronically transmit any recording from within a courtroom during a proceeding;
 - (d) Engage in electronic writing within a courtroom;
 - (e) Electronically transmit any electronic writing from within a courtroom during a proceeding; or
 - (f) While remotely observing or participating in a proceeding, electronically transmit any electronic writing directly and specifically to a witness until the witness is excused by the court.
- (3) Subsections (2)(d), (e), and (f) of this rule do not apply to attorneys or to agents of attorneys unless otherwise ordered by the court.
- (4)
 - (a) A request for permission to engage in electronic recording or writing must be made prior to the start of a proceeding. No fee may be charged.
 - (b) The granting of permission to any person or entity to engage in electronic recording or writing is subject to the court's discretion, which may include considerations of the need to preserve the solemnity, decorum, or dignity of the court; the protection of the parties, witnesses, or jurors; or whether the requestor has demonstrated an understanding of all provisions of this rule.
 - (c) If the court grants all or part of the request,
 - (i) The court shall provide notice to all parties, and electronic recording or writing thereafter shall be allowed in the proceeding, in any courtroom or during a remote proceeding, consistent with the court's permission.

- (ii) The court shall permit one video camera, one still camera, and one audio recorder in the courtroom, and it may permit additional cameras and electronic recording in any courtroom or during a remote proceeding consistent with this rule.
 - (ii) The court may prescribe the location of and the manner of operating electronic equipment within a courtroom. Artificial lighting is not permitted.
 - (iv) Any pooling arrangement made necessary by limitations on equipment or personnel imposed by the court is the sole responsibility of the persons or entities seeking to electronically record.
 - (v) The court will not mediate disputes. If multiple persons or entities seeking to electronically record are unable to agree on the manner in which the recording will be conducted or distributed, the court may terminate any or all such recording.
- (5) Except as otherwise provided in this rule:
 - (a) The court shall not wholly prohibit all electronic recording of a court proceeding unless the court makes findings of fact on the record setting forth substantial reasons that establish:
 - (i) A reasonable likelihood that the electronic recording will interfere with the rights of the parties to a fair trial or will affect the presentation of evidence or the outcome of the trial; or
 - (ii) A reasonable likelihood that the costs or other burdens imposed by the electronic recording will interfere with the efficient administration of justice.
 - (b) "Wholly prohibit all electronic recording" means issuing an order prohibiting all recording of a proceeding by all persons. The court's denial of a particular request under the factors in section (4)(b) does not constitute an order prohibiting all recording by all persons and does not require findings of fact on the record, even if the person whose request is denied is the only person who has requested permission to record a proceeding.
- (6) The court has discretion to limit electronic recording of particular components of the proceeding based on one or more of the following factors:
 - (a) The limitation is necessary to preserve the solemnity, decorum, or dignity of the court or to protect the parties, witnesses, or jurors;
 - (b) The use of electronic recording equipment interferes with the proceedings;
 - (c) The electronic recording of a particular witness would endanger the welfare of the witness or materially hamper the testimony of the witness; or
 - (d) The requestor has not demonstrated an understanding of all provisions of this rule.
- (7) Notwithstanding any other provision of this rule, the following may not be electronically recorded by any person at any time:
 - (a) Proceedings in chambers.

- (b) Any notes or conversations intended to be private including but not limited to counsel and judges conferring at the bench and conferences involving counsel and their clients.
 - (c) Dissolution, juvenile, paternity, adoption, custody, visitation, support, civil commitment, trade secrets, and abuse, restraining, and stalking order proceedings.
 - (d) Proceedings involving a sex crime, if the victim has requested that the proceeding not be electronically recorded.
 - (e) *Voir dire*.
 - (f) Any juror anywhere under the control and supervision of the court during the entire course of the trial in which the juror sits.
 - (g) Recesses or any other time the court is off the record.
- (8) For the purpose of determining whether this rule or other requirements imposed by the court have been violated, or to ensure the effective administration of justice, a person engaged in electronic recording under this rule must, upon request and without expense to the court, provide to the court, for *in camera* review, an electronic recording in a format accessible to the court. The copy may be retained by the court and may be sealed if necessary for the further administration of justice.
- (9) If a person violates this rule or any other requirement imposed by the court, the court may order the person, and any organization with which the person is affiliated, to terminate electronic recording or electronic writing.
- (10) This rule does not:
- (a) Limit the court's contempt powers;
 - (b) Operate to waive ORS 44.510 to 44.540 (media shield law); or
 - (c) Apply to court personnel engaged in the performance of official duties.
- (11) A judicial district may, by SLR:
- (a) Designate areas outside a courtroom and under the control and supervision of the court, including hallways or entrances, where electronic recording is allowed without prior permission, unless otherwise ordered in a particular instance.
 - (b) Adopt procedures to obtain permission for electronic recording or electronic writing.
 - (c) SLR 3.181 is reserved for any SLR adopted under this subsection.

3.190 CIVIL ARRESTS (Repealed)

REPORTER'S NOTE: UTCR 3.190 was repealed to avoid conflict or duplication with ORS 181A.828.