ORAP COMMITTEE 2026
February 12 Agenda -- Combined Agenda and Materials

Substantive Agenda

3. ORAP 1.40, 13.25, COA Verification and Sanctions -- Use of Fabricated Authorities from Artificial Intelligence

6. ORAP 3.30(6), 3.40(1)(b), 5.85(3)(a), etc., Response or Reply Times Run from Service Instead of Filing

11. ORAP 5.15, Brief References -- Party Designation in Domestic Relations Cases

12. ORAP 5.35 etc, Terminology -- Use "Table" of Contents etc. Instead of "Index"

13. ORAP 5.45, Plain Error Rule -- Revisions and Explanations

15. ORAP 5.50, Excerpts of Record -- Streamline Requirements

16. ORAP 6.05, COA Oral Argument Requests -- Time Runs from Reply Brief

17. ORAP 6.25, COA Reconsideration -- Permit Requests to Reconsider En Banc

19. ORAP 8.45, Notice of Mootness -- Probable Mootness, Does Not Require Party to Argue for Dismissal

20. ORAP 9.05 or 9.17, SCT Petitions or Briefs -- Use Same Sequence for Questions on Review and Facts

21. ORAP 10.15, COA Juvenile Dependency and Adoption -- Also Expedite Juvenile Delinquency Appeals

22. ORAP 10.30, COA Nonprecedential Opinions -- Expand When Opinions are Precedential

23. ORAP 11.10, new 11.12, 11.15, SCT Mandamus -- Consolidate and Clean Rules

26. ORAP 13.05, Costs -- Address SCT Remand to COA

27. ORAP 13.10, Attorney Fees -- Amount is Discretionary Even Absent Objection

Technical Agenda

1. ORAP 1.32 etc, Temporary Rules -- Terminology -- Change OSB Member to Licensee

2. ORAP 1.35, Filing and Service -- Clarifications re Duplicative Filings and Service Requirements

4. ORAP 1.45, Filings -- Cannot Use Color Text or Highlighting

5. ORAP 2.35, SCT Summary Determination of Appealability -- Caption Requirement

7. ORAP 3.30, Transcript Preparation -- Service Requirements

8. ORAP 3.43, New Rule -- Process to Transfer Transcript Between Appeals

9. ORAP 3.50, 4.20, Electronic Records Retention

10. ORAP 5.05, 7.10, Briefs and Motions -- Captions Must Note Impending Oral Argument Date

14. ORAP 5.50, 6.05, 6.10, 6.15, and 6.30, Temporary Rules -- COA Argument

18. ORAP 6.25, COA Reconsideration of Orders -- 14 Days for Motion to Reconsider

24. ORAP 12.25, SCT Bar Proceedings -- Correct Terminology and Cross References

25. ORAP 12.27, SCT Judicial Disability Proceedings -- Correct Limiting Term in Rule Subcaption

ORAP COMMITTEE 2026
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AMENDING RULE(S): Proposal # 3 -- ORAP 1.40, 13.25 -- Address Fabricated Facts and Law from Artificial Intelligence in Court of Appeals

PROPOSER: Hon. Erin C. Lagesen, Chief Judge, Court of Appeals

EXPLANATION:

The proposed amendments are intended to address the uptick in fabricated law that the Court of Appeals is seeing as the use of generative artificial intelligence increases. Rather than propose direct regulation of the use of AI, the proposed amendments center on the consequences of submitting fabricated law and facts to the court, rather than on the likely mechanism by which that is occurring.

RULES AS AMENDED:

Rule 1.40
VERIFICATION; DECLARATIONS; ADOPTING ORCP 17

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

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

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

(b) signed and dated by the person; and

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

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

understand it is made for use as evidence in court and is subject to penalty for perjury." As used in these rules, "declaration" means a declaration under penalty of perjury.

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

(5) In addition to the specifications of ORCP 17, a person signing a document filed in the Court of Appeals certifies that (a) all citations to cases, statutes, constitutions, or other sources of law are to sources that, in fact, exist and that have been read and verified by the person or another human being; and (b) the person or another human being has verified that all statements of fact are supported by the portion of the record cited in the manner required by ORAP 5.20(1)-(3).

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

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

Rule 13.25
PETITIONS AND MOTIONS FOR DAMAGES AND SANCTIONS

(1) Damages under ORS 19.445, attorney fees under ORS 20.105, and reasonable expenses (including attorney fees) under ORAP 1.40(4) and ORCP 17 D are recoverable only by petition filed within 21 days after the decision deciding the appeal or review in the manner provided in ORAP 13.10. A request for damages, attorney fees, and reasonable expenses should not be included in the party's brief.

(2) A motion for reasonable expenses (including attorney fees) under ORAP 1.40(4) and ORCP 17 D based on the filing of a motion or thing shall be included in the answer or objection to the motion, statement of costs and disbursements, or petition for attorney fees to which the motion for sanctions relates.

(3) (a) A person making the certification described in ORAP 1.40(5) is subject to sanctions under circumstances that include, but are not limited to, the following: when a document filed by the person contains (i) a citation or citations to nonexistent case law or any other nonexistent source of law; (ii) a nonexistent quotation attributed to an existing source of law; (iii) a statement of a principle of law attributed to an existing case or other source of law where the attribution is one that is objectively unreasonable; or (iv) an assertion of fact that is objectively unreasonable to attribute to the portion of the record cited in the manner required by ORAP 5.20 (1)-(3).

(b) Any document containing a citation, quotation, or objectively unreasonable attribution described in ORAP 13.25(3)(a) will be stricken on the court's own motion or on the motion of a party. The party that filed the document will be given 14 days to show cause why the proceeding should not proceed without the stricken document and why monetary sanctions should not be imposed on the person who signed it. Where the document in question is an opening brief, the show cause order shall direct the party to show cause why the appeal should not be dismissed. After the the response to the show cause order is filed, any other party to the appeal may file a supplemental response and may include a request for reasonable attorney fees incurred in responding to the citations to nonexistent sources, nonexistent quotations, and/or objectively unreasonable legal or factual attributions.

(c) Absent extraordinary circumstances, the court will impose monetary sanctions of a minimum of $500 for each citation to nonexistent authority, and $1000 for each nonexistent quotation or objectively unreasonable factual or legal attribution. In all instances, the court will award reasonable attorney fees incurred by any other party in responding to the citations, quotations, and/or objectively unreasonable attributions described in ORAP 13.25(3)(a). In determining whether to award sanctions in excess of the amounts required under this rule, and whether to permit the filing of a new document in the place of a stricken one, the court will take into account (i) the number of citations to nonexistent authority, nonexistent quotations, and/or objectively unreasonable attributions; (ii) the number of occasions on which the person filing the document has been found by the Court of Appeals or any other court to have filed documents containing citations to nonexistent authority, nonexistent quotations, and/or objectively unreasonable attributions; (iii) any prejudice to the other parties to the case; (iv) the degree to which the party on whose behalf the document was filed played a role in including or encouraging the use of citations to nonexistent authority, nonexistent quotations, and/or objectively unreasonable attributions; and (iv) any such other factor the court deems relevant under the circumstances.

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AMENDING RULE(S): Proposal # 6 -- ORAP 3.30(6), 3.40(1)(b), 5.85(3)(a), etc. -- Response or Reply Times Run from Service Instead of Filing

PROPOSER: Tom Christ

EXPLANATION:

"Change the time for responding or replying to another party's document to begin when the document is served rather than when it was filed, as in the following rules, which are just a few of many:

- 3.30(6)
- 3.40(1)(b)
- 5.85(3)(a)
- 5.90(3)
- 6.25(4)
- 6.30(3)(a)(ii)
- 6.35(3)
- 7.05(3) and (4)
- 9.10(2)
- etc.

"You can't respond or reply to a document you haven't yet received. So the time for doing so should not begin to run until you've received it or are likely to have received it in the ordinary course, which can happen after filing, sometimes long after. To be sure, the rules say that a party that files a document must also serve it, but doesn't say when that has to happen. See ORAP 1.35(2) (a)(i). If the document is served electronically, via the eFiling system, the service and filing will coincide. But it doesn't have to be served that way; it can be served by email or mail instead, and at some later date, see ORAP 1.35(b), and, of course, if it's mailed, the delivery could take several days. That's why the ORCP adds three days to the time to respond or reply to a document served that way in a trial court proceeding. See ORCP 10 B.

"Lawyers are accustomed to response- and reply-times that start with service, not filing. E.g., ORCP 21 D and E (motions to make more definite and certain), ORCP 23 A (response to motion to amend), ORCP 43 B(2) (response to RFP); ORCP 45 B (response to request for admissions); ORCP 47 C ('served and filed') (response to MSJ and reply to response).

"I recently received a document that my client's opponent filed electronically on a Saturday evening and served on me by mail when the Post Office opened on Monday. When I got it on, I think, Wednesday, five days of my time to respond had already lapsed."

RULE AS AMENDED:

[None provided. If the committee approves this change as a policy matter, recommend that a workgroup be formed to identify all rules and propose appropriate changes.]

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AMENDING RULE(S): Proposal # 11 -- ORAP 5.15(1) -- Party Designations in Domestic Relations Cases

PROPOSER: Hon. Steven R. Powers, Court of Appeals

EXPLANATION:

The existing rule requires briefs to refer to the parties in domestic relations proceedings as "husband or wife, father or mother, or other appropriate specific designation." The terminology may require updating to reflect the possibility of having two parents of the same sex.

RULE AS AMENDED:

[None. Current rule is:]

Rule 5.15
REFERENCES IN BRIEFS TO PARTIES
AND CRIME VICTIMS OF OFFENSES AGAINST PERSONS

(1) In the body of a brief, parties shall not be referred to as appellant and respondent, but as they were designated in the proceedings below, except that in domestic relations proceedings the parties shall be referred to as husband or wife, father or mother, or other appropriate specific designation.

(2) In the body of a brief on appeal in a criminal, post-conviction, or habeas corpus case or on judicial review of an order of the Board of Parole and Post-Prison Supervision that includes a conviction for an offense, or attempt to commit an offense, compiled in ORS Chapter 163, any references to the victim of the offense must not include the victim's full name.

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AMENDING RULE(S): Proposal # 12 -- ORAP 5.35 etc. -- Terminology -- Substitute "Table" for "Index" in Briefs

PROPOSER: Tom Christ

EXPLANATION:

"The rules refer repeatedly to *index* when it means *table*. E.g.; ORAP 5.35 (the appellant's opening brief shall begin with an 'index' of the contents of the brief, and 'index' of appendices, and an 'index' of authorities.)"

RULE AS AMENDED:

[None provided. Although the proposal appears limited to briefs, the word "index" appears 30 times in the ORAP and is used for other things, including the record prepared by the trial court (e.g., ORAP 3.20) and the excerpts of record (e.g., ORAP 5.50). There are also at least a few uses of the verb "indexed" (e.g., ORAP 5.65: "The opening brief on cross-appeal shall be appropriately indexed at the front of the answering brief."]

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AMENDING RULE(S): Proposal # 13 -- ORAP 5.45 -- Revise and Explain Plain Error Rule

PROPOSER: Ernest Lannet & William Kabeiseman

EXPLANATION:

[From the memo:]

"ORAP 5.45 addresses plain error review in a piecemeal fashion in Subsections 1, (4)(b) and (7); it does not explain when an alternative request for plain error review may be presented in the argument section; and it warns of the consequences for failing to request plain error review rather than instructing appellants where and how to request plain error review. The proposal consolidates most sections on plain error review, explains that an alternative argument for plain error review may be presented in the argument section, and directs appellants to both request plain error review and explain to the reviewing court why plain error is warranted.

"Subsection 1 of ORAP 5.45 addresses plain error review but is silent on other circumstances in which the preservation requirement gives way entirely. The rule suggests that no exceptions exist, which would be misleading to unrepresented individuals. The proposal references those exceptional circumstances that the preservation requirement gives way and provides citation to applicable authority.

"Subsection 4 is also confusing in that it begins immediately with a subsection (a) to address preserved claims of error, ends with an introductory phase to three further subsections (i) to (iii), and then presents a subsection (b) untethered from the rest of Subsection 4. It contains obscure and confusing phrasing, e.g., 'Each assignment of error must demonstrate * * * .' The proposal suggests changes to correct structural defects and improve readability.

"Subsection 6 recognizes that practitioners may present a combined argument section for multiple assignments of error when the assignments of error present essentially the same legal question. The current rule is silent on whether practitioners may present a combined subheading for preservation of error or a combined subheading for standard of review. Practitioners often present combined preservation of error and combined standard of review subsections when presenting a combined argument. Often the appellant preserved the assignments of error at the same time and/or in the same manner. Often those assignments of error are subject to the same standard(s) of review. The proposal provides guidance on when presenting a combined preservation of error subsection or a combined standard of review subsection is proper."

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] and that the preservation requirement gives way entirely under some circumstances.[2] 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.

(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 or explain why the court nonetheless may review the assignment of error with citations to appliable authority. ~~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.~~

(a) Under the subheading "Preservation of Error":

(i) The appellant ~~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) The appellant ~~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 appellant ~~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.

(iv) The appellant may combine preservation statements for multiple assignments of error under one subheading when the questions or issues were raised and resolved contemporaneously or when separate claims of error present essentially the same legal question and were raise and ruled on multiple times.

(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. When the appellant contends that the error was preserved in the lower court but requests plain error review in the alternative, the appellant may request plain error review and explain the reasons why that the court should consider the error in the subsequent argument section.[3]

(5) Under the subheading "Standard of Review," each assignment of error must identify the applicable standard or standards of review, supported by citation to the statute, case law, or other legal authority for each standard of review. The appellant may combine standard of review statements for multiple assignments of error when separate claims of error present essentially the same legal question and the appellant expressly states which standard or standards of review apply to each assignment of error.~~[2]~~[4]

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

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

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[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] *See Peeples v. Lampert*, 345 Or 209, 219-21, 191 P3d 637 (2008) (explaining general preservation requirement, the prudential policies it serves, and noting when those prudential policies must give way entirely under particular circumstances, *i.e.*, when a party has no practical ability to raise an issue, when preservation would have been futile because the trial court would

not have permitted an issue to be raised or the record to be developed, or when the unique nature of the right itself is not subject to preservation requirements).

[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).

~~[2]~~[4] 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).~~

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AMENDING RULE(S): Proposal # 15 -- ORAP 5.50 -- Streamline Excerpts of Record Rule

PROPOSER: Hon. Jacqueline S. Kamins, Court of Appeals

EXPLANATION:

The rule proposes streamlining ORAP 5.50 governing the excerpts of record. These revisions emphasize the importance of including all decisions under review, provide an overall organizational structure, and stress that parties are not to include legal memoranda in the excerpts. The court routinely receives excerpts that are not in any kind of order, that do not include the decision under review, and that include all the legal memoranda filed in the trial court. The revisions also address the changing reality that the court now has access to the record in advance of argument and submission, but the transcripts are difficult to navigate and thus the rule encourages including transcript pages cited in the briefs in the excerpts of record. The rule also harmonizes the state appellate rule with the federal rule which should streamline practices for practitioners that appear in both courts.

RULE AS AMENDED:

Rule 5.50
THE EXCERPT OF RECORD

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

(2) The excerpt of record must contain:[2]

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

(b) All decisions being appealed, reviewed, or collaterally challenged, whether oral or written, final or interim. If the decision was an oral one, the relevant transcript pages must be included ~~Any written or oral rulings by the lower tribunal or agency addressing the issues presented by the assignments of error.~~

(c) ~~Any pleading or excerpt of pleadings, particular part of the transcript, exhibit, evidentiary submission and other filing necessary for reviewing and understanding the assignments of error in advance of oral argument, if the parties~~

~~anticipate that the case will be orally argued~~All parts of the record relevant for deciding the appeal, including all parts of the trial court record and transcript pages cited or referenced in the briefs.[3]

(d) If~~-~~, and only if, preservation of error is or is likely to be disputed in the case, ~~parts~~ the portions of memoranda and the transcript pages pertinent to the issue of preservation presented by the case. Legal memoranda should not be otherwise be included in the excerpts of record.

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

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

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

(3~~4~~) A respondent may file, as part of the respondent's brief, a supplemental excerpt of record containing those materials required by subsection (2) of this rule that were omitted from the excerpt of record.

(4~~5~~) The excerpt of record and any supplemental excerpt of record must be in the following form:

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

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

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

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

(5~~6~~) Self-represented parties are not required to file an excerpt of record or a supplemental excerpt of record. If a self-represented party files an excerpt of record or a supplemental excerpt of record, it must contain only those documents specified in ORAP 5.50(2)(a) and (b), must contain no other documents, and must otherwise comply with this rule.

(6~~7~~) The appellate court may strike any excerpt of record or supplemental excerpt of record that does not substantially comply with the requirements of this rule.

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

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

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

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AMENDING RULE(S): Proposal # 16 -- ORAP 6.05(4)(b) -- Time to Request Oral Argument in Court of Appeals Runs from Reply Brief

PROPOSER: Kyle Krohn and Sasha Petrova (separate proposals to same effect)

EXPLANATION:

By Kyle Krohn:

> "I propose that the timeline for requesting oral argument under ORAP 6.05(4)(b) be tied to the reply brief instead of the answering brief. In my experience, and the experience of every colleague I have spoken with, the current timeline which is tied to the answering brief has proven to be cumbersome and inefficient. Often appellant's counsel does not closely review the answering brief until they begin working on the reply, and that close review can inform the decision whether to request argument. Having to make the argument decision before working on the reply brief has led some attorneys to request argument more frequently than they would otherwise in an abundance of caution, while it has caused others to have to file untimely argument requests. Appellants will be able to make a fully informed decision whether to argue once they have completed the reply brief or decided not to file one.
>
> "Conversely, tying the timeline to the reply brief should benefit respondents as well. The current timeline permits unscrupulous appellants to sandbag the respondent by deciding not to request argument but to wait until the oral argument deadline has passed and then submit a reply brief containing unexpected arguments that the respondent will have no opportunity to rebut. Counsel for OPDC and the state currently have an informal agreement to avoid that result by communicating both the argument and reply decisions before the deadline, but the rules should not require an informal agreement between opposing parties to avoid unfairness. Just like appellants, respondents will be better equipped to decide whether argument will be helpful once briefing is complete."

By Sasha Petrova:

> "The reasons for my proposal are twofold. First, it is more intuitive for parties to begin thinking about oral argument once appellate briefing is complete. Requiring requests for oral argument to be submitted during the briefing process may present traps for unwary practitioners, and may increase the volume of late requests for oral argument via motion. Second, parties considering whether to request oral argument cannot make fully informed decisions until briefing is complete. For example, a respondent may wish to request oral

argument only if necessary to address points made in the appellant's reply brief."

RULE AS AMENDED:

By Kyle Krohn:

Rule 6.05
REQUEST FOR ORAL ARGUMENT;
SUBMISSION WITHOUT ARGUMENT

* * * * *

(4) Timelines for submitting an Oral Argument Appearance Request

* * * * *

(b) With the exception of land use cases subject to ORAP 4.60 through 4.74, and juvenile dependency, termination of parental rights, and adoption cases subject to ORAP 10.15, which are governed by separate procedures in paragraphs (c) and (d) of this subsection, an Oral Argument Appearance Request shall be filed no later than 14 days after the filing of the reply ~~answering~~ brief ~~or notification of waiver of appearance~~ by the last appellant. ~~respondent, whichever is later.~~ If more than one reply ~~answering~~ brief is filed, the 14-day period runs from the date on which the last reply ~~answering~~ brief is filed. If no reply brief is filed, the Oral Argument Appearance Request shall be filed no later than 14 days after the date on which the reply brief or motion for leave to file a reply brief was due.

* * * * *

By Sasha Petrova:

Rule 6.05
REQUEST FOR ORAL ARGUMENT;
SUBMISSION WITHOUT ARGUMENT

* * * * *

(4) Timelines for submitting an Oral Argument Appearance Request

* * * * *

(b) With the exception of land use cases subject to ORAP 4.60 through 4.74, and juvenile dependency, termination of parental rights, and adoption cases subject to ORAP 10.15, which are governed by separate procedures in paragraphs (c) and (d) of this subsection, an Oral Argument Appearance Request shall be filed no later than 14 days after the filing of a reply brief, or, if no reply brief is filed, no later than 14 days after the reply brief was due. If more than one reply brief is filed or permitted to be filed, including in cross-appeals, the 14-day period runs from the date on which the last reply brief is filed or was due. ~~the answering brief or notification of waiver of appearance by the last respondent, whichever is later. If more than one answering brief is filed, the 14-day period runs from the date on which the last answering brief is filed.~~

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AMENDING RULE(S): Proposal # 17 -- ORAP 6.25 -- Add Option to Request Court of Appeals Reconsideration En Banc

PROPOSER: Benjamin Gutman

EXPLANATION:

The Department of Justice proposes amending ORAP 6.25 to allow parties to affirmatively request panel or en banc reconsideration from the Court of Appeals in limited, extraordinary circumstances. The suggested phrasing is taken largely from the federal rule.

RULE AS AMENDED:

Rule 6.25
RECONSIDERATION BY COURT OF APPEALS

(1) As used in this rule, "decision" means an opinion, per curiam opinion, nonprecedential memorandum opinion, affirmance without opinion, and an order ruling on a motion or an own motion matter that disposes of the appeal. A party seeking reconsideration of a decision of the Court of Appeals shall file a petition for reconsideration. A petition for reconsideration may be a petition for panel reconsideration or a petition for reconsideration en banc. Panel rehearing is the ordinary means of reconsidering a panel decision. A petition for reconsideration en banc is disfavored.

(2) A petition for panel reconsideration shall be based on one or more of these contentions:

(a) A claim of factual error in the decision;

(b) A claim of error in the procedural disposition of the appeal requiring correction or clarification to make the disposition consistent with the holding or rationale of the decision or the posture of the case below;

(c) A claim of error in the designation of the prevailing party or award of costs;

(d) A claim that there has been a change in the statutes or case law since the decision of the Court of Appeals; or

(e) A claim that the Court of Appeals erred in construing or applying the law. Claims addressing legal issues already argued in the parties' briefs and addressed by the Court of Appeals are disfavored.

(3) A petition for reconsideration en banc shall be based on one or more of these contentions, which shall be identified in a statement at the beginning of the petition:

(a) the panel decision conflicts with another decision of the Oregon Court of Appeals (with citation to the conflicting case or cases) and the full court's consideration is therefore necessary to secure or maintain uniformity of the court's decisions;

(b) the panel decision conflicts with a decision of the Oregon Supreme Court (with citation to the conflicting case or cases); or

(c) the proceeding involves one or more questions of exceptional importance, each concisely stated.

(42) A petition for reconsideration shall be filed within 14 days after the decision. The petition shall have attached to it a copy of the decision for which reconsideration is sought. The form of the petition and the manner in which it is served and filed shall be the same as for motions generally, except that the petition shall have a title page printed on plain white paper and containing the following information:

(a) The full case caption, including appropriate party designations for the parties as they appeared in the court from which the appeal was taken and as they appear on appeal, and the trial and appellate court case numbers; and

(b) A title designating the party filing the petition, such as "Appellant's Petition for Panel Reconsideration," "Appellant's Petition for Reconsideration En Banc," ~~or~~ "Respondent's Petition for Panel Reconsideration~~.~~," or "Respondent's Petition for Reconsideration En Banc."

(53) The filing of a petition for reconsideration is not necessary to exhaust remedies or as a prerequisite to filing a petition for review.

(64) If a response to a petition for reconsideration is filed, the response shall be filed within seven days after the petition for reconsideration was filed. The court will proceed to consider a petition for reconsideration without awaiting the filing of a response, but will consider a response if one is filed before the petition for reconsideration is considered and decided.[1]

(75) A request for reconsideration of any other order of the Court of Appeals ruling on a motion or an own motion matter shall be entitled "motion for reconsideration." A motion for reconsideration is subject to ORAP 7.05 regarding motions in general.

[1] *See* ORAP 9.05(2) regarding the effect of a petition for reconsideration by the Court of Appeals on the due date and consideration of a petition for review by the Supreme Court.

ORAP COMMITTEE 2026
February 12 Materials

AMENDING RULE(S): Proposal # 19 -- ORAP 8.45 -- Notify Court of Probable Mootness Without Obligation to Argue for Dismissal

PROPOSER: Benjamin Gutman

EXPLANATION:

"As the rule currently is stated, it requires that, when a respondent becomes aware of facts rendering an appeal moot, the respondent must either file a motion to dismiss on that basis, or provide notice of those facts 'with argument against dismissal[.]' We propose amending ORAP 8.45 to allow the respondent to provide notice when becoming aware of facts that 'probably' render an appeal moot, but without necessarily providing argument against dismissal. The purpose of that would be to recognize that, on occasion, a respondent may have no necessary interest in arguing for or against dismissal of a case, while still providing the court with information that the court may want in order to avoid issuing opinions in moot cases."

RULE AS AMENDED:

Rule 8.45
DUTY TO GIVE NOTICE WHEN FACTS RENDER APPEAL MOOT

(1) When an appellant becomes aware of facts that probably render an appeal moot,[1] except as to facts the disclosure of which is barred by the attorney-client privilege, the appellant must provide notice of the facts to the court.[2]

(a) If the appellant filing the notice believes that the appeal should not be dismissed, the notice must include the appellant's argument against dismissal.[3]

(b) Any other party may, within 14 days after the filing of a notice, file a response arguing that the appeal should or should not be dismissed. An appellant may, within seven days after the filing of a response, file a reply.

(c) If the notice does not include an argument against dismissal and no party files a response arguing against dismissal, the court may treat the notice as an unopposed motion to dismiss the appeal.

(2) When an appellant believes that the appeal is moot based on privileged facts, that party may move to dismiss the appeal as moot, but need not reveal the privileged facts.

(3) When a respondent becomes aware of facts that probably render an appeal moot, the respondent must either move to dismiss or provide notice of the facts to the court with an explanation as to why the respondent is not moving to dismiss the appeal~~with argument against dismissal to the court~~. Any other party may, within 14 days after the filing of the motion or notice, file a response arguing that the appeal should or should not be dismissed. A respondent may, within seven days after the filing of a response, file a reply.

(4) (a) If a party becomes aware of nonprivileged facts that may render an appeal moot and has reason to believe that the other party or parties are unaware of those facts, the party must promptly inform the other party or parties of those facts.

(b) If no notice is given under this subsection and the court later dismisses the appeal as moot based on those facts, the court, on motion of an aggrieved party, may award costs and attorney fees incurred by the aggrieved party after notice should have been given of the facts that may have rendered the appeal moot, payable by the party who had knowledge of those facts.

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[1] For example, the death of the defendant in a criminal case, the release from custody of the plaintiff in a habeas corpus case, or settlement of a civil case.

[2] An appeal is generally considered moot if the court's decision would have no practical effect on the rights of the parties, including no legally cognizable collateral consequences of the ruling challenged on appeal. *See, e.g., Dept. of Human Services v. P.D.*, 368 Or 627, 496 P3d 1029 (2021); *Garges v. Premo*, 362 Or 797, 421 P3d 345 (2018); *State v. K.J.B.*, 362 Or 777, 416 P3d 291 (2018); *Dept. of Human Services v. A.B.*, 362 Or 412, 412 P3d 1169 (2018).

[3] *See generally* ORS 14.175 (permitting a party to continue to prosecute, and the court to issue judgment in, certain actions notwithstanding that the specific act, policy, or practice giving rise to the action no longer has a practical effect on the party, so long as the party has standing and the challenged act is both capable of repetition (or the policy or practice continues in effect), and is likely to evade future judicial review).

ORAP COMMITTEE 2026
February 12 Materials

AMENDING RULE(S): Proposal # 20 -- ORAP 9.05(4) or 9.17(2)(b) -- Supreme Court Petitions and Briefs Use Different Order for Questions on Review and Facts

PROPOSER: Tom Christ

EXPLANATION:

This proposal is to reconcile an inconsistency in the Supreme Court rules between the format of a petition for review and the format of a brief on the merits when review is allowed. In a petition for review, ORAP 9.05(4) requires the facts to come before the questions on review. For briefs, however, ORAP 9.17(2)(b) requires the questions on review to come before the facts. The proposer suggests that putting the questions after the facts "might be the preferred order since the facts often inform the questions."

RULE AS AMENDED:

[Relevant part of current rules are:]

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

* * * * *

(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.

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Rule 9.17
BRIEFS ON THE MERITS ON REVIEW

* * * * *

(b) The petitioner's brief on the merits on review shall contain:

(i) Concise statements of the legal question or questions presented on review and of the rule of law that petitioner proposes be established. The questions should not be argumentative or repetitious. The phrasing of the questions need not be identical with any statement of questions presented in the petition for review, but the brief may not raise additional questions or change the substance of the questions already presented.

(ii) A concise statement of:

(A) The nature of the action or proceeding, the relief sought in the trial court, and the nature of the judgment rendered by the trial court; and

(B) All the facts of the case material to determination of the review, in narrative form with references to the places in the record where the facts appear.

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ORAP COMMITTEE 2026
February 12 Materials

AMENDING RULE(S): Proposal # 21 -- ORAP 10.15 -- Expedite Juvenile Delinquency Appeals

PROPOSER: Christa Obold Eshleman

EXPLANATION:

"Members of the ORAP Committee:

"Youth, Rights & Justice (YRJ) is a non-profit public defense law firm that has been representing children, parents, and youth in juvenile delinquency and dependency cases at both the trial and appellate levels for the past 50 years. Based on our experience with these cases, we propose amending the rules of appellate procedure to expedite juvenile delinquency cases.

"Under the current version of the ORAPs, the briefing schedule in juvenile delinquency appeals is the same as for adult criminal cases. Under that schedule, unlike juvenile dependency cases, delinquency appeals are not resolved swiftly, leaving youth in uncertainty and sometimes subject to unlawful custodial dispositions for very long periods of time. In our experience, juvenile delinquency appeals that go through the entire process rarely resolve in less than a year and a half and frequently take over two years. Youth (often between ages 11 and 18 when their cases are tried) are rapidly moving between developmental stages. Because of this, lengthy delays in appellate case resolution are inconsistent with the express purposes of the juvenile justice system, which are framed in terms of youth development, i.e. that the system 'shall provide a continuum of services that emphasize prevention of further criminal activity by the use of early and certain sanctions, reformation and rehabilitation programs[,] and swift and decisive intervention in delinquent behavior.'[1] (Emphases added.) As the National Council of Juvenile and Family Court Judges (NCJFCJ) states, 'the juvenile justice process will not achieve its goals if the process is not timely.'[2]

"Appeals in juvenile delinquency cases involve a variety of issues, including whether the youth's adjudication was lawful and whether the juvenile court was authorized to remove the youth from their family and place them elsewhere, including in a youth correctional facility. Petitions for relief based on ineffective assistance of counsel generally must wait until a direct appeal is

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[1] ORS 419C.001(1).

[2] NCJFCJ, Enhanced Juvenile Justice Guidelines: Improving Court Practice in Juvenile Justice Cases, Ch. VII Appeals Process at 2 (pdf 222) (2018), available at NCJFCJ_Enhanced_Juvenile_Justice_Guidelines_Final.pdf (accessed Dec. 29, 2025) (hereafter NCJFCJ).

done.[3] Protracted delays in the appeal process cause system-involved youth to experience the ongoing consequences of potentially erroneous rulings for significant portions of their formative years. Such delays also leave youth in a state of uncertainty, which can hinder their progress not only in rehabilitation from unlawful behavior, but also in normal childhood development.[4] Moreover, a lengthy appellate process means that dispositional issues are likely to become moot before they are decided, both inhibiting the youth's sense of procedural justice and the development of juvenile justice case law.

"Relatively speaking, there are very few juvenile delinquency appeals filed in Oregon each year, and they result in even fewer written opinions by the appellate courts.[5] Virtually all the youth in these appeals are represented either by YRJ or OPDC attorneys. Because of this, the systemwide impact of a change to expedite juvenile delinquency cases will be minimal. YRJ's attached proposal would add juvenile delinquency cases to the expedited timelines in ORAP 10.15. It would, however, keep the current initial due date for opening and answering briefs in delinquency cases (49 days), which is 21 days more than what is allowed in other expedited cases (28 days).[6] The purpose of keeping the longer briefing timeline in delinquency cases is to provide a more flexible amount of time to address novel issues that may arise in delinquency cases, as well as accommodating the challenges a change would bring to attorneys accustomed to non-expedited timelines and carrying a mixed caseload.

"Thank you for considering our proposal. We would welcome a workgroup to discuss any concerns."

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[3] ORS 419C.615(1)(a) ("No proceeding under ORS 419C.615 may be pursued while direct appellate review of the adjudication remains available.").

[4] NCJFCJ at 3 (pdf 223); see also (citing research showing that sustained stress leads to adverse developmental outcomes for children, available at Stress Disrupts the Architecture of the Developing Brain); The Sentencing Project, Why Youth Incarceration Fails 20-21 (Dec 2022) (citing research that incarceration slows maturation and can exacerbate trauma, available at Why-Youth-Incarceration-Fails.pdf).

[5] Official statistics about the number of appellate delinquency cases were not available by the deadline to submit this proposal, but YRJ's search on Westlaw revealed approximately 38 written appellate opinions in juvenile delinquency cases in 2025 (including both precedential and non-precedential), out of a total of over 1400 opinions in all case types.

[6] The time to oral argument in the proposal for subsection (7) was calculated based on 49 days + 14-day extension + 21 days for reply brief + 7 days between reply brief and oral argument.

RULE AS AMENDED:

Proposer adds that additional conforming amendments would be necessary to other rules, but does not identify them.

Rule 10.15
JUVENILE DEPENDENCY, JUVENILE DELINQUENCY, AND ADOPTION CASES

(1) (a) Subsections (2) through (10) of this rule apply to the following:

(i) an adoption case and a juvenile dependency case under ORS 419B.100, including but not limited to a case involving jurisdiction, disposition, permanency, or termination of parental rights, but excluding a support judgment under ORS 419B.400 to 419B.408; and~~.~~

(ii) a juvenile delinquency case under ORS Chapter 419C.

(b) On motion of a party or on the court's own motion, the Court of Appeals may direct that a juvenile delinquency case or a juvenile dependency case under ORS 419B.100, except a termination of parental rights case, be exempt from subsections (2) through (10) of this rule.

(2) The caption of the notice of appeal, notice of cross-appeal, motion, or any other thing filed either in the Court of Appeals or the Supreme Court shall prominently display the words "EXPEDITED JUVENILE DEPENDENCY CASE (NOT TPR)," "EXPEDITED TERMINATION OF PARENTAL RIGHTS CASE," "JUVENILE DEPENDENCY SUPPORT CASE (NOT EXPEDITED)," ~~or~~ "EXPEDITED ADOPTION CASE," or "EXPEDITED JUVENILE DELINQUENCY CASE," as appropriate.[1]

(3) (a) In an adoption case or in a juvenile dependency case in which the appellant is proceeding without counsel or is represented by retained counsel, appellant shall make arrangements for preparation of the transcript within seven days after filing the notice of appeal.

(b) When the appellant is eligible for court-appointed counsel on appeal, the preparation of transcript at state expense is governed by the policies and procedures of the Office of Public Defense Services.[2]

(c) In a disposition proceeding pursuant to ORS 419B.325, a dispositional review proceeding pursuant to ORS 419B.449, a permanency proceeding pursuant to ORS 419B.470 to 419B.476, or a termination of parental rights proceeding, respecting the record in the trial court, the appellant may designate as part of the record on appeal only the transcripts of the proceedings giving rise to the judgment or order being appealed, the exhibits in the proceeding, and the list prepared by the trial court under

ORS 419A.253(2) and all reports, materials, or documents identified on the list. A party may file a motion to supplement the record with additional material pursuant to ORS 19.365(4) and ORAP 3.05(3).

(4) (a) The court shall not extend the time for filing the transcript under ORAP 3.30 or for filing of an agreed narrative statement under ORAP 3.45 for more than 14 days.[3]

(b) Except on a showing of exceptional circumstances, the court shall not grant an extension of time to request correction of the transcript.[4]

(5) The trial court administrator shall file the trial court record within 14 days after the date of the State Court Administrator's request for the record.

(6) (a) Appellant's opening brief and excerpt of record in a juvenile dependency or termination of parental rights case shall be served and filed within 28 days after the events specified in ORAP 5.80(1)(a) to (f). Appellant's opening brief and excerpt of record in a juvenile delinquency case shall be served and filed within 49 days after the events specified in ORAP 5.80(1)(a) to (f).

(b) Respondent's answering brief in a juvenile dependency or termination of parental rights case shall be served and filed within 28 days after the filing of the appellant's opening brief. Respondent's answering brief in a juvenile delinquency case shall be served and filed within 49 days after the filing of the appellant's opening brief.

(c) A reply brief, if any, shall be served and filed within 21 days after the filing of the respondent's answering brief and no later than 7 days before the date set for oral argument or submission to the court.

(d) The court shall not grant an extension of time of more than 14 days for the filing of any opening or answering brief, nor shall the court grant more than one extension of time. The court shall not grant an extension of time for the filing of a reply brief.

(7) The court will set the case for oral argument within 63 days after the filing of the opening brief in a dependency or termination of parental rights case, and within 91 days after the filing of the opening brief in a juvenile delinquency case.

(8) Notwithstanding ORAP 7.30, a motion made before oral argument shall not toll the time for transmission of the record, filing of briefs, or hearing argument.

(9) The Supreme Court shall not grant an extension or extensions of time totaling more than 21 days to file a petition for review.

(10) (a) Notwithstanding any provision to the contrary in ORAP 14.05(3):

(i) The Administrator forthwith shall issue the appellate judgment based on a decision of the Court of Appeals on expiration of the 35-day period to file a petition for review, unless there is pending in the case a motion or petition for reconsideration on the merits, or a petition for review on the merits, or a party has been granted an extension of time to file a motion or petition for reconsideration on the merits or a petition for review on the merits. If any party has filed a petition for review on the merits and the Supreme Court denies review, the Administrator forthwith shall issue the appellate judgment.

(ii) The Administrator shall issue the appellate judgment based on a decision of the Supreme Court on the merits as soon as practicable after the decision is rendered and without regard to the opportunity of any party to file a petition for reconsideration.

(b) If an appellate judgment has been issued on an expedited basis under paragraph (a) of this subsection, the Administrator may recall the appellate judgment or issue an amended appellate judgment as justice may require for the purpose of making effective a decision of the Supreme Court or the Court of Appeals made after issuance of the appellate judgment, including but not necessarily limited to a decision on costs on appeal or review.

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[1] *See* Appendix 10.15.

[2] *See* ORS 419A.211(3).

[3] *See* ORS 19.370(2); ORS 19.395.

[4] *See* ORS 19.370(5).

ORAP COMMITTEE 2026
February 12 Materials

AMENDING RULE(S): Proposal # 22 -- ORAP 10.30 -- Extend Circumstances When Court of Appeals Opinion is Precedential

PROPOSER: Ernest Lannet

EXPLANATION:

"From presentations during this year's Day with the Appellate Courts CLE, it appears that the Court of Appeals requires panel unanimity to designate an opinion precedential while the Ninth Circuit requires panel unanimity to designate a written disposition to be a memorandum (rather than a precedential, published opinion). In other words, the results differ if only two judges on a three-judge panel believe that a disposition should be nonprecedential: in the Oregon Court of Appeals, the resulting disposition would be a nonprecedential memorandum opinion, and in the Ninth Circuit, the resulting disposition would be a published, precedential opinion.

"This difference was difficult to derive from the text of ORAP 10.30 and the analogous local rule of the Ninth Circuit, Circuit Rule 36-2. But as I understand the only section that would apply, a single judge can influence the decision by authoring a concurring or dissenting opinion—even by authoring concurring opinion that joins the majority opinion in full.

"The difference may stem from the different phrasing of how the criteria for deciding whether a disposition should be precedential operates. The criteria listed in ORAP 10.30(2)(b), including the preference of a single judge, are merely advisory ('relevant in determining whether a written opinion will be precedential') while the substantially similar criteria listed in Circuit Rule 36-2 are dispositive.

"More specifically, in ORAP 10.30, the fact that one judge will submit a concurring opinion and requests that the disposition of the court be precedential is only one relevant factor to that determination. ORAP 10.30(2)(b)(v). In Circuit Rule 36-2, that same factor—as all the other factors—is determinative. Moreover, when looking at any of the other factors in ORAP 10.30(2)(b), it appears that any of those factors should be dispositive and result in a precedential, published opinion.

"This proposal offers two options. First, it proposes amending ORAP 10.30 to require a decision be published and precedential when the opinion meets any of the criteria listed in ORAP 10.30(2)(b). Second, it proposes amending ORAP 10.30 to specify that one judge's decision to author a separate concurring or dissenting opinion—even only to concur entirely with the opinion and request it be precedential—be specified as sufficient to result in a published, precedential opinion. Circuit Rule 36-2 is included for reference."

Circuit Rule 36-2

CIRCUIT RULE 36-2. CRITERIA FOR PUBLICATION

"A written, reasoned disposition shall be designated as an OPINION if it:

"(a) Establishes, alters, modifies or clarifies a rule of federal law, or

"(b) Calls attention to a rule of law that appears to have been generally overlooked, or

"(c) Criticizes existing law, or

"(d) Involves a legal or factual issue of unique interest or substantial public importance, or

"(e) Is a disposition of a case in which there is a published opinion by a lower court or administrative agency, unless the panel determines that publication is unnecessary for clarifying the panel's disposition of the case, or

"(f) Is accompanied by a separate concurring or dissenting expression, and the author of such separate expression requests publication of the disposition of the Court and the separate expression."

(Rev. 1/1/12; 12/1/25)

RULE AS AMENDED:

Option 1:

Rule 10.30
NONPRECEDENTIAL AND PRECEDENTIAL DECISIONS

(1) Nonprecedential Decisions

(a) The judges participating in the decision of an appeal submitted to a department may issue a nonprecedential decision as follows:

(i) By issuing an affirmance without opinion;

(ii) By issuing a nonprecedential memorandum opinion, designated by a notation on the title page of the opinion substantially to the effect of the

following: "This is a nonprecedential memorandum opinion pursuant to ORAP 10.30 and may not be cited except as provided in ORAP 10.30(1)."

(b) A nonprecedential memorandum opinion may be authored or per curiam.

(c) Nonprecedential memorandum opinions are not precedent and are not binding authority except as relevant under the law of the case doctrine or the rules of claim preclusion or issue preclusion.

(d) Nonprecedential memorandum opinions may be cited to identify nonprecedential memorandum opinions that conflict with each other if relevant to an issue before the court or to identify recurring legal issues for which there is no clear precedent. When citing a nonprecedential memorandum opinion, the citing party shall:

(i) Explain the reason for citing the nonprecedential memorandum opinion and how it is relevant to the issues presented; and

(ii) Include a parenthetical as part of the case citation indicating that the case is a "nonprecedential memorandum opinion."

(2) Precedential Decisions

(a) All written opinions issued by the Court of Appeals sitting en banc are precedential.

(b) A ~~Otherwise, the following factors are relevant in determining whether a~~ written opinion will be precedential when the opinion:

(i) ~~Whether the opinion~~ establishes a new principle or rule of law or clarifies existing case law;

(ii) ~~Whether the opinion~~ decides a novel issue involving a constitutional provision, statute, administrative rule, rule of court, or other provision of law;

(iii) ~~Whether the opinion~~ resolves a significant or recurring legal issue for which there is no clear precedent;

(iv) ~~Whether the opinion~~ criticizes existing law;

(v) ~~Whether the opinion~~ is accompanied by a separate concurring or dissenting opinion, and the author of such separate opinion requests that the disposition of the court be precedential; or

(vi) ~~Whether the opinion~~ resolves a conflict among existing nonprecedential memorandum opinions brought to the court's attention.

Option 2:

Rule 10.30
NONPRECEDENTIAL AND PRECEDENTIAL DECISIONS

(1) Nonprecedential Decisions

(a) The judges participating in the decision of an appeal submitted to a department may issue a nonprecedential decision as follows:

(i) By issuing an affirmance without opinion;

(ii) By issuing a nonprecedential memorandum opinion, designated by a notation on the title page of the opinion substantially to the effect of the following: "This is a nonprecedential memorandum opinion pursuant to ORAP 10.30 and may not be cited except as provided in ORAP 10.30(1)."

(b) A nonprecedential memorandum opinion may be authored or per curiam.

(c) Nonprecedential memorandum opinions are not precedent and are not binding authority except as relevant under the law of the case doctrine or the rules of claim preclusion or issue preclusion.

(d) Nonprecedential memorandum opinions may be cited to identify nonprecedential memorandum opinions that conflict with each other if relevant to an issue before the court or to identify recurring legal issues for which there is no clear precedent. When citing a nonprecedential memorandum opinion, the citing party shall:

(i) Explain the reason for citing the nonprecedential memorandum opinion and how it is relevant to the issues presented; and

(ii) Include a parenthetical as part of the case citation indicating that the case is a "nonprecedential memorandum opinion."

(2) Precedential Decisions

(a) All written opinions issued by the Court of Appeals sitting en banc are precedential.

(b) An opinion will be precedential when the opinion is accompanied by a separate concurring or dissenting opinion, and the author of such separate opinion

requests that the disposition of the court be precedential.

(c) Otherwise, the following factors are relevant in determining whether a written opinion will be precedential:

(i) Whether the opinion establishes a new principle or rule of law or clarifies existing case law;

(ii) Whether the opinion decides a novel issue involving a constitutional provision, statute, administrative rule, rule of court, or other provision of law;

(iii) Whether the opinion resolves a significant or recurring legal issue for which there is no clear precedent;

(iv) Whether the opinion criticizes existing law; or

(v) ~~Whether the opinion is accompanied by a separate concurring or dissenting opinion, and the author of such separate opinion requests that the disposition of the court be precedential; or~~

~~(vi)~~ Whether the opinion resolves a conflict among existing nonprecedential memorandum opinions brought to the court's attention.

ORAP COMMITTEE 2026
February 12 Materials

AMENDING RULE(S): Proposal # 23 -- ORAP 11.10, new 11.12, 11.15 -- Reorganize Mandamus Rules and Remove Obsolete Requirements

PROPOSER: Lisa Norris-Lampe (Kendra Matthews submitted)

EXPLANATION:

Reorganize mandamus rules for clarity and increased ease in reading. Remove some obsolete provisions (e.g., requiring the filing of "originals" and including a separate requirement for service (which is required by other rules)). Close a gap in the rules relating to requiring the parties to notify the court if there is compliance with an alternative writ at any time. See additional notes with each proposed rule change.

RULE AS AMENDED:

I. Amend ORAP 11.10

A. Summary of Proposed Amendments to ORAP 11.10.

Move discussion of relator's reply memorandum to a separate subsection (from ORAP 11.10(1) to ORAP 11.10(2). Move balance of current rule (ORAP 11.10(2) - (5)) to a new rule (ORAP 11.12), so that ORAP 11.10 addresses only the adverse party's response and the relator's reply.

B. Clean Version of Proposed Rule.

Rule 11.10

MANDAMUS:
RESPONSE BY ADVERSE PARTY; REPLY MEMORANDUM

(1) Unless the court directs otherwise, the adverse party in a mandamus proceeding that challenges the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals or the defendant in any other mandamus proceeding may file a memorandum in

opposition.[1] The form of the memorandum must comply with ORAP 7.10(1) and (2). Any such memorandum must be filed within 14 days after the date the petition was filed.

(2) A relator may not file a reply memorandum unless the court has requested one.

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[1] *See* ORS 34.130(4) regarding an attorney for a party in an underlying proceeding appearing on behalf of a judge who is the defendant in a mandamus proceeding. *See* ORS 34.250(4) regarding a judge who is not the named defendant in a mandamus proceeding but whose action is challenged in the proceeding moving to intervene as a party.

C. Proposed Amendments.

Rule 11.10

MANDAMUS: RESPONSE BY ADVERSE PARTY ~~AND CONSIDERATION BY THE COURT~~; REPLY MEMORANDUM

(1) Unless the court directs otherwise, the adverse party in a mandamus proceeding that challenges the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals or the defendant in any other mandamus proceeding may file a memorandum in opposition.[1] The form of the memorandum must~~shall~~ comply with ORAP 7.10(1) and (2). Any such ~~The original~~ memorandum must~~shall~~ be filed within 14 days after the date the petition was filed. ~~A relator may not file a reply memorandum unless the court has requested one.~~

(2) A relator may not file a reply memorandum unless the court has requested one.

~~The petition and any memoranda in opposition to the petition shall be considered by the court without oral argument unless otherwise ordered. If the court determines to accept jurisdiction, it shall issue an order allowing the petition. Otherwise, the petition shall be denied by order of the court.~~

~~(3) If the court issues an alternative writ of mandamus in a mandamus proceeding that challenges the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals, the Administrator shall mail copies of the order allowing the petition and the alternative writ of mandamus to the relator, to the adverse party, to any intervenor, and to the judge or court whose action is challenged in the petition. Proof of service of an alternative writ of mandamus need not be filed with the court. Unless the alternative writ of mandamus specifically requires that a return, answer, or responsive pleading be filed, the judge or court to which the writ is issued need not file a return, answer, or responsive pleading.~~

~~(4) If the court issues an alternative writ in any other mandamus proceeding, the court shall set a return date in the writ, and the Administrator shall mail copies of the order allowing~~

~~the petition and the alternative writ of mandamus to the relator, to the defendant, and to any intervenor. On or before the return date in the writ, the defendant shall either file a certificate of compliance or show cause by answer or motion to dismiss as provided by ORS 34.170. If the defendant fails to file a certificate of compliance or show cause by answer or motion to dismiss on or before the return date set in the writ, the court, without further notice to the parties, may issue a peremptory writ of mandamus, as provided in ORS 34.180. When the case is at issue on the pleadings,[2] the court will notify the parties to that effect.~~

~~(5) At any time after the filing of a petition for writ of mandamus or the issuance of an alternative writ of mandamus, if the defendant, judge, or court performs the act sought in the petition or required in the alternative writ, the relator shall notify, and the defendant, judge, court, or any other party to the lower court case may notify, the court of that compliance. After receiving notice of the compliance, the court on motion of any party or on its own motion may dismiss the mandamus proceeding.~~

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[1] *See* ORS 34.130(4) regarding an attorney for a party in an underlying proceeding appearing on behalf of a judge who is the defendant in a mandamus proceeding. *See* ORS 34.250(4) regarding a judge who is not the named defendant in a mandamus proceeding but whose action is challenged in the proceeding moving to intervene as a party.

~~[2] *See* ORS 34.170, ORS 34.180, and ORS 34.190.~~

~~*See generally* ORS 34.105 through 34.250 and Article VII (Amended), section 2, of the Oregon Constitution.~~

II. Adopt ORAP 11.12

A. Summary of Proposed New Rule (ORAP 11.12).

Reformat the provisions currently in ORAP 11.10(2) - (5) so that each is easier to read and is consistent with Supreme Court practice. Delete obsolete references to mailing documents. Remove references to serving documents because those requirements are already covered by other ORAPs.

- *New* ORAP 11.12(1) replaces ORAP 11.10(2). There are no substantive changes.

- *New* ORAP 11.12(2) replaces ORAP 11.10(3), which relates to a mandamus proceeding challenging the action of a judge in a particular circuit court, the Tax Court, or the Court of Appeals. Breaks out the old subsection into multiple sections to make it more readable; clarifies a judge or court's obligation when an alternative writ is issued.

- (a) (amendment) Uses the word "transmit" instead of "mail" to reflect that the SCA uses electronic means to notify litigants and judges when possible.

- (b) (new provision): consistent with Supreme Court practice, the rule clarifies that the alternative writ will command a trial court response (compliance or a show cause) by a specified date.

- (c) (amendment): this new section clarifies that, by statute, a judge or court is not actually required to respond and explains what happens if it does not complete the act as directed by the return date.

- (d) (amendment): requires prompt notice to the Supreme Court and specific argument from relator if the lower court takes action to comply. Although ORAP 11.10(5), which is ORAP 11.12(4) in the proposed amendments, already includes a notice requirement, this more specific rule is intended to reduce the times that the Supreme Court learns of the trial court's compliance at or on the eve of oral argument and finds that the parties are unprepared to address the impact of compliance on the case.

- *New* ORAP 11.12(3) replaces ORAP 11.10(4), which relates any other type of mandamus proceeding.

    - (a) (amendment) Uses the word "transmit" instead of "mail" to reflect that the SCA uses electronic means to notify litigants and judges when possible.

    - (b) and (c) are already contained in ORAP 11.10(4); they are broken out into separate subsections for greater clarity.

- *New* ORAP 11.12(4) and ORAP 11.12(5) replace ORAP 11.10(5).

    - There is no substantive change to the notice requirement. This subsection is broken into two parts because the last sentence, which relates to how the Supreme Court will react to a notice of compliance, applies to a notice served pursuant to ORAP 11.12(2)(d) and one served pursuant to ORAP 11.12(4).

B. Clean Version of Proposed Rule.

Rule 11.12

MANDAMUS:
CONSIDERATION BY THE COURT; ISSUANCE OF WRIT, AND RESPONSE TO WRIT

(1) The court will consider the petition and any memoranda in opposition without oral argument unless otherwise ordered. If the court determines to accept jurisdiction, it shall issue an order allowing the petition, together with either an alternative or peremptory writ.

(2) Issuance and delivery of an alternative writ of mandamus in a mandamus proceeding challenging the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals; further actions:

(a) If the court issues an alternative writ of mandamus, the Administrator shall transmit copies of the order allowing the petition and the alternative writ of mandamus to the relator, to the adverse party, to any intervenor, and to the judge or court whose action is challenged in the petition. Proof of service of an alternative writ of mandamus need not be filed with the court.

(b) If the court issues an alternative writ of mandamus, the writ will include a date by which the Supreme Court commands that the judge or court must either perform the act required to be performed or show cause why the judge or court has not done so.

(c) Notwithstanding the language in the alternative writ and consistent with ORS 34.250, unless the alternative writ of mandamus specifically requires that a return, answer, or responsive pleading be filed, the judge or court to which the writ is issued need not file a return, answer, or responsive pleading. If the judge or court does not perform the act required by the alternative writ by the date referenced in subsection (b), the mandamus proceeding will proceed to briefing and oral argument as provided in ORAP 11.15.

(d) If, at any time, the judge or court to which the alternative writ was issued performs the act required by the writ, the relator must file in the mandamus proceeding either a motion to dismiss or a notice explaining why relator contends the Supreme Court should nevertheless retain jurisdiction. The relator must file the motion or notice within three judicial days of the entry date of the judge's or court's compliance.

(3) Issuance and delivery of an alternative writ in any other mandamus proceeding; further actions:

(a) If the court issues an alternative writ of mandamus, the Administrator shall transmit copies of the order allowing the petition and the alternative writ of mandamus to

the relator, to the defendant, and to any intervenor.

(b) If the court issues an alternative writ of mandamus, the writ will include a return date by which the Supreme Court commands that the defendant must either file a certificate of compliance or show cause by answer or motion to dismiss as provided by ORS 34.170.[1]

(c) If the defendant fails to either file a certificate of compliance or show cause on or before the return date, the court, without further notice to the parties, may issue a peremptory writ of mandamus, as provided in ORS 34.180.

(4) Unless subsection (2)(d) of this rule already applies, if, at any time, the defendant, judge, or court performs the act sought in the petition or required by the alternative writ, the relator shall notify, and the defendant, judge, court, or any other party to the lower court case may notify, the court of that compliance.

(5) Upon receiving any notice or certificate of compliance, the court on motion of any party or on its own motion may dismiss the mandamus proceeding.

[1] *See generally* ORS 34.170 through 34.190.

C. Proposed Amendments.

Rule 11.12

MANDAMUS:
CONSIDERATION BY THE COURT; ISSUANCE OF WRIT, AND RESPONSE TO WRIT

(12) The court will consider the petition and any memoranda in opposition ~~to the petition shall be considered by the court~~ without oral argument unless otherwise ordered. If the court determines to accept jurisdiction, it shall issue an order allowing the petition, together with either an alternative or peremptory writ. ~~Otherwise, the petition shall be denied by order of the court.~~

(23) Issuance and delivery of ~~If the court issues~~ an alternative writ of mandamus in a mandamus proceeding ~~that~~ challenging ~~es~~ the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals; further actions:

(a) If the court issues an alternative writ of mandamus, the Administrator shall transmit ~~mail~~ copies of the order allowing the petition and the alternative writ of mandamus to the relator, to the adverse party, to any intervenor, and to the judge or court whose action is challenged in the petition. Proof of service of an alternative writ of mandamus need not be filed with the court.

(b) If the court issues an alternative writ of mandamus, the writ will include a date by which the Supreme Court commands that the judge or court must either perform the act required to be performed or show cause why the judge or court has not done so.

(c) Notwithstanding the language in the alternative writ and consistent with ORS 34.250, ~~U~~unless the alternative writ of mandamus specifically requires that a return, answer, or responsive pleading be filed, the judge or court to which the writ is issued need not file a return, answer, or responsive pleading. If the judge or court does not perform the act required by the alternative writ by the date referenced in subsection (b), the mandamus proceeding will proceed to briefing and oral argument as provided in ORAP 11.15.

(d) If, at any time, the judge or court to which the alternative writ was issued performs the act required by the writ, the relator must file in the mandamus proceeding either a motion to dismiss or a notice explaining why relator contends the Supreme Court should nevertheless retain jurisdiction. The relator must file the motion or notice within three judicial days of the entry date of the judge's or court's compliance.

(3~~4~~) Issuance and delivery of ~~If the court issues~~ an alternative writ in any other mandamus proceeding; further actions:

(a) If the court issues an alternative writ of mandamus, ~~, the court shall set a return date in the writ, and~~ the Administrator shall transmit ~~mail~~ copies of the order allowing the petition and the alternative writ of mandamus to the relator, to the defendant, and to any intervenor.

(b) If the court issues an alternative writ of mandamus, the writ will include a return date by which the Supreme Court commands that ~~On or before the return date in the writ,~~ the defendant must ~~shall~~ either file a certificate of compliance or show cause by answer or motion to dismiss as provided by ORS 34.170.[1]

(c) If the defendant fails to either file a certificate of compliance or show cause ~~by answer or motion to dismiss~~ on or before the return date, ~~set in the writ,~~ the court, without further notice to the parties, may issue a peremptory writ of mandamus, as provided in ORS 34.180. ~~When the case is at issue on the pleadings,[2] the court will notify the parties to that effect.~~

(4~~5~~) Unless subsection (2)(d) of this rule already applies, if, a~~A~~t any time, ~~after the filing of a petition for writ of mandamus or the issuance of an alternative writ of mandamus, if~~ the defendant, judge, or court performs the act sought in the petition or required by~~in~~ the alternative writ, the relator shall notify, and the defendant, judge, court, or any other party to the lower court case may notify, the court of that compliance.

(5) Upon ~~After~~ receiving any notice or certificate of ~~the~~ compliance, the court on motion of any party or on its own motion may dismiss the mandamus proceeding.

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[1] *See generally* ORS 34.170 through 34.190.

III. Amend ORAP 11.15

A. Summary of Proposed Amendments to ORAP 11.15.

Simplify the discussion relating to the timing of filing an opening brief. Remove obsolete provisions relating to service and mailing.

B. Clean Version of Proposed Rule.

Rule 11.15

MANDAMUS:
BRIEFS AND ORAL ARGUMENT

(1) Unless otherwise directed by the court, and provided that the court does not receive notice of compliance with the alternative writ of mandamus by the defendant, judge, or court to whom the writ was issued, the relator shall file and serve the opening brief within 28 days after the date of issuance of the alternative writ of mandamus.

(2) The adverse party in a mandamus proceeding that challenges the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals, or the defendant in any other mandamus proceeding, shall have 28 days after the date the relator files the opening brief to file the answering brief.

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

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

(5) All briefs shall be prepared in substantial conformity with ORAP 5.35 through 5.50.

C. Proposed Amendments.

Rule 11.15
MANDAMUS:
BRIEFS AND ORAL ARGUMENT

(1) Unless otherwise directed by the court, and provided that the court does not receive notice of compliance with the alternative writ of mandamus by the defendant, judge, or court ~~official~~ to whom the writ was issued, the relator shall file and serve the opening brief within 28 days after the date of issuance of the alternative writ of mandamus. ~~:~~

~~(a) Within 28 days after the date of issuance of the alternative writ of mandamus, in a mandamus proceeding that challenges the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals; or~~

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

(2) The adverse party in a mandamus proceeding that challenges the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals, or the defendant in any other mandamus proceeding, shall have 28 days after the date the relator ~~serves and~~ files the opening brief to file the answering brief.

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

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

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

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

IV. ORAP 11.17

No proposed changes to ORAP 11.17. It is included so the committee has all of the ORAPs related to mandamus at hand when reviewing the proposal.

Rule 11.17

MANDAMUS:
ISSUANCE OF COMBINED
PEREMPTORY WRIT OF MANDAMUS
AND APPELLATE JUDGMENT

If the court has determined that the relator is entitled to a peremptory writ of mandamus, the court shall direct the Administrator to issue the writ. The peremptory writ may be combined with the appellate judgment and issued together as a single document. If the peremptory writ and the appellate judgment are combined, the relator need not file proof of service of the writ with the court, and the judge or court to which the writ is issued in a mandamus proceeding that challenges the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals or the defendant in any other mandamus proceeding need not file a return showing compliance with the writ.

_____
See ORS 34.250(8).

ORAP COMMITTEE 2026
February 12 Materials

AMENDING RULE(S): Proposal # 26 -- ORAP 13.05 -- Consider Amending Costs Rule to Address Situation when Supreme Court Remands to Court of Appeals

PROPOSER: Kendra M. Matthews, Appellate Legal Counsel, Supreme Court

EXPLANATION:

"ORAP 13.05 outlines the rules for costs and disbursements on appeal. It addresses most scenarios that arise on appeal and much of it has statutory underpinnings. There are times that arise with some regularity, however, that may not be fully captured by the rule.

"For instance, ORAP 13.05(2) calls upon "the court" to "determine whether the prevailing party is allowed costs at the time the court issues its decision." But with some regularity, a Supreme Court decision will remand the case to the Court of Appeals for further proceedings. Thus, the answer to whether the prevailing party in the Supreme Court should be allowed costs on appeal is "maybe." While ORAP 13.05(4) provides for an award of costs to be determined following remand to the trial court or relevant agency, there is no express provision relating to the Supreme Court awarding costs to abide the outcome of a remand to the Court of Appeals. While a separate provision addressing that scenario might be appropriate, this gap in the rules might also be addressed by adding language to ORAP 13.05(2), e.g., "The court will designate a prevailing party and determine whether the prevailing party is allowed costs at the time that the court issues its decision. If the Supreme Court on review remands to the Court of Appeals for further proceedings, the court will designate a prevailing party in the proceeding before the Supreme Court, but the award of costs will abide the outcome of the proceedings on remand to the Court of Appeals."

"Rather than formally proposing such an amendment, I propose that members of the committee, including specifically a representative from each court and the records section, review each paragraph of the rule to discuss and determine whether an amendment or amendments would bring greater clarity to how costs are handled on appeal."

RULE AS AMENDED:

[None. Current rule is:]

Rule 13.05
COSTS AND DISBURSEMENTS

(1) As used in this rule, "costs" includes costs and disbursements. "Allowance" of costs refers to the determination by the court that a party is entitled to claim costs. "Award" of costs is the determination by the court of the amount that a party who has been allowed costs is entitled to recover.[1]

(2) The court will designate a prevailing party and determine whether the prevailing party is allowed costs at the time that the court issues its decision.

(3) When an allowance of costs is dependent on identification of a party as a prevailing party, the appellant or petitioner (or cross-appellant or cross-petitioner, as appropriate) is the prevailing party only if the court reverses or substantially modifies the judgment or order from which the appeal or judicial review was taken. Otherwise, the respondent (or cross-respondent, as appropriate) is the prevailing party.

(4) When a party prevails on appeal or on review and the case is remanded for further proceedings in which the party who ultimately will prevail remains to be determined, the court may allow costs to abide the outcome of the case. If the court allows costs to abide the outcome of the case, the prevailing party shall claim its costs within the time and in the manner prescribed in this rule. The appellate court may determine the amount of costs under this subsection, and may condition the actual award of costs on the ultimate outcome of the case. In that circumstance, the award of costs shall not be included in the appellate judgment, but shall be awarded by the court or tribunal on remand in favor of the prevailing party on appeal or review, if that party also prevails on remand, and shall be awarded against the party designated on appeal or review as the party liable for costs.

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

(b) A party must file the original statement of costs and disbursements, accompanied by proof of service showing that a copy of the statement was served on every other party to the appeal.

(c) A party objecting to a statement of costs and disbursements shall file objections within 14 days after the date of service of the statement. A reply, if any, shall be filed within 14 days after the date of service of the objections. The original objection or reply shall be filed with proof of service.

(6) (a) (i) Except as provided in paragraph (ii) of this subsection, whether a brief is printed or reproduced by other methods, the party allowed costs is entitled

to recover 10 cents per page for the number of briefs required to be filed or actually filed, whichever is less, plus one copy for each party served and one copy for each party on whose behalf the brief was filed.

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

(b) If the party who has been allowed costs has incurred transaction charges or any document recovery charges* in connection with electronically filing any document, the party is entitled to recover any such charge so incurred.

(c) If the prevailing party who has been allowed costs has paid for copies of audio or video tapes in lieu of a transcript or incident to preparing a transcript, the party is entitled to recover any such charge so incurred.

(d) (i) For the purposes of awarding the prevailing party fee under ORS 20.190(1)(a), an appeal to the Court of Appeals and review by the Supreme Court shall be considered as one continuous appeal process and only one prevailing party fee per party, or parties appearing jointly, shall be awarded.

(ii) The prevailing party fee will be awarded only to a party who has appeared on the appeal or review.

(iii) A prevailing party is not entitled to claim more than one prevailing party fee, nor may the court award more than one prevailing party fee against a nonprevailing party, regardless of the number of parties in the action.[2]

(e) If a prevailing party who has been allowed costs timely files a statement of costs and disbursements and no objections are filed, the court will award costs in the amount claimed, except when the entity from whom costs are sought is not a party to the proceeding or when the court is without authority to award particular costs claimed.

(f) If a prevailing party who has been allowed costs untimely files a statement of costs and disbursements, that party is entitled to recover the party's filing or first appearance fee and the prevailing party fee under ORS 20.190(1).

(g) If a prevailing party who has been allowed costs does not file a statement of costs and disbursements, the court shall award that party's filing or first appearance fee and the prevailing party fee under ORS 20.190(1) as part of the appellate judgment.

(7) Parties liable for payment of costs and disbursements shall be jointly liable.

(8) If the Supreme Court on review reverses a decision of the Court of Appeals, then any award of costs by the Court of Appeals is deemed to be reversed, unless otherwise directed by the Supreme Court.

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[1] *See generally* ORS 20.310 to 20.330 concerning costs and disbursements on appeal and in cases of original jurisdiction.

[*] Document recovery charges were charges collected to offset the cost incurred by the courts in making the necessary number of printed copies of documents eFiled before February 8, 2016, under the authority of a prior version of ORAP 16.20(2). *See, e.g.*, ORAP 16.20(2) (2017).

[2] *See* ORS 20.190(4).

ORAP COMMITTEE 2026
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AMENDING RULE(S): Proposal # 27 -- ORAP 13.10(9) -- Make Amount of Attorney Fees Discretionary in Absence of Objection

PROPOSER: Kendra M. Matthews, Appellate Legal Counsel, Supreme Court

EXPLANATION:

ORAP 13.10(9) currently provides that in the absence of timely filed objections an appellate court "*will"* award fees in the amount sought if they are statutorily authorized. The rule, as written, affords the relevant appellate court no discretion whatsoever. This proposal suggests changing the word "will" to "may."

Appellate courts, generally, rely on the parties' briefing to resolve attorney fee disputes. *See, e.g., Lehman v. Bradbury*, 334 Or 579, 582, 54 P3d 591 (2002) (court "generally limit [its] inquiry to the objections, if any, filed by the opposing party."); *Dockins v. State Farm Ins*. Co., 330 Or 1, 6-7, 997 P2d 859 (2000) ("We depend on petitioner's opponent to raise objections to the petitioner's request with as much particularity as possible and to support those objections with argument and (where appropriate) documentation that will assist this court in its efforts.").

But while an appellate court may almost always award fees in the amount sought if there is no objection--and the party against whom a fee award is sought should be aware of the risks inherent in not filing an objection to a fee petition--an appellate court should not be *required* by rule to do so under all circumstances. There may be circumstances in which a court concludes that the fees requested are unreasonable even absent an objection. Using the word "may" accounts for that possibility while still leaving in place the presumption and authority for the court to default to awarding the fees sought in the amount requested if there is no objection filed.

RULE AS AMENDED:

Rule 13.10

PETITION FOR ATTORNEY FEES

(1) This rule governs the procedure for petitioning for attorney fees in all cases except the recovery of compensation and expenses of court-appointed counsel payable from the Public Defense Services Account.[1]

(2) A petition for attorney fees shall be served and filed within 28 days after the date of decision. The filing of a petition for review or a petition for reconsideration does not suspend the time for filing the petition for attorney fees.

(3) When a party prevails on appeal or on review and the case is remanded for further proceedings in which the party who ultimately will prevail remains to be determined, the appellate court may condition the actual award of attorney fees on the ultimate outcome of the case. In that circumstance, an award of attorney fees shall not be included in the appellate judgment, but shall be awarded by the court or tribunal on remand in favor of the prevailing party on appeal or review, if that party also prevails on remand, and shall be awarded against the party designated on appeal or review as the party liable for attorney fees. The failure of a party on appeal or on review to petition for an award of attorney fees under this subsection is not a waiver of that party's right later to petition on remand for fees incurred on appeal and review if that party ultimately prevails on remand.

(4) When the Supreme Court denies a petition for review, a petition for attorney fees for preparing a response to the petition for review may be filed in the Supreme Court.

(5) (a) A petition shall state the total amount of attorney fees claimed and the authority relied on for claiming the fees. The petition shall be supported by a statement of facts showing the total amount of attorney time involved, the amount of time devoted to each task, the reasonableness of the amount of time claimed, the hourly rate at which time is claimed, and the reasonableness of the hourly rate.

(b) If a petition requests attorney fees pursuant to a statute, the petition shall address any factors, including, as relevant, those factors identified in ORS 20.075(1) and (2) or ORS 20.105(1), that the court may consider in determining whether and to what extent to award attorney fees.[2]

(6) Objections to a petition shall be served and filed within 14 days after the date the petition is filed. A reply, if any, shall be served and filed within 14 days after the date of service of the objections.

(7) A party to a proceeding under this rule may request findings regarding the facts and legal criteria that relate to any claim or objection concerning attorney fees. A party requesting findings must state in the caption of the petition, objection, or reply that the party is requesting findings pursuant to this rule.[3] A party's failure to

request findings in a petition, objection, or reply in the form specified in this rule constitutes a waiver of any objection to the absence of findings to support the court's decision.

(8) The original of any petition, objections, or reply shall be filed with the Administrator together with proof of service on all other parties to the appeal, judicial review, or proceeding.

(9) In the absence of timely filed objections to a petition under this rule, the Supreme Court and the Court of Appeals, respectively, ~~will~~ may allow attorney fees in the amount sought in the petition, except in cases in which:

(a) The entity from whom fees are sought was not a party to the proceeding; or

(b) The Supreme Court or the Court of Appeals is without authority to award fees.

(10) If the Supreme Court on review reverses a decision of the Court of Appeals, then any award of attorney fees by the Court of Appeals is deemed to be reversed, unless otherwise directed by the Supreme Court.

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[1] This subsection does not create a substantive right to attorney fees, but merely prescribes the procedure for claiming and determining attorney fees under the circumstances described in this subsection.

[2] *See, e.g.*, *Tyler v. Hartford Insurance Group*, 307 Or 603, 771 P2d 274 (1989), and *Matizza v. Foste*r, 311 Or 1, 803 P2d 723 (1990), with respect to ORS 20.105(1), and *McCarthy v. Oregon Freeze Dry, Inc.*, 327 Or 84, 957 P2d 1200, *adh'd to on recons*, 327 Or 185, 957 P2d 1200 (1998), with respect to ORS 20.075.

[3] For example: "Appellant's Petition for Attorney Fees and Request for Findings Under ORAP 13.10(7)" or "Respondent's Objection to Petition for Attorney Fees and Request for Findings Under ORAP 13.10(7)."

See Appendix 13.10.

ORAP COMMITTEE 2026
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AMENDING RULE(S): Proposal # 1 -- ORAP 1.32, 1.35, 6.10, 8.15, 16.10, 16.45, and 16.60 -- Temporary Amendments Correcting Terminology re Attorneys

PROPOSER: [Temporary amendments to be made permanent]

EXPLANATION:

This proposal would make permanent temporary changes adopted by Chief Justice Order 25-044 / Chief Judge Order 25-07. The order explains the amendments as follows:

> "The purpose of the amendments is to conform the rules to the changed terminology regarding persons admitted to the practice of law in Oregon by Or Laws 2025, chapter 32 (changing 'members' of the Oregon State Bar to 'licensees')."

RULES AS AMENDED:

Rule 1.32
OUT-OF-STATE ATTORNEY AND SELF-REPRESENTED PARTY CONTACT INFORMATION; CHANGES IN CONTACT INFORMATION FOR ATTORNEY, OUT-OF-STATE ATTORNEY, AND SELF-REPRESENTED PARTY

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

(a) A self-represented party or out-of-state attorney who provides the court with an email address on a paper filed document or files a document using the appellate eFiling system will receive court notifications by email. A self-represented litigant may request notification by regular mail instead of email by filing a notice with the court..

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

(2) If an attorney for a party files a change of address with the Oregon State Bar, or if

an out-of-state attorney or a self-represented party notifies the court of a change of mailing or email address in writing or otherwise, the attorney or party must inform all other parties of the change of mailing or email address within seven calendar days.

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

Rule 1.35
FILING AND SERVICE

(1) Filing

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

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

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

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

(B) Except as otherwise provided in ORAP 16.30 or 16.60(2), any other person may file any document by either the eFiling system or by paper filing. Paper filing should be made either by delivering the document via U.S. Postal Service or commercial delivery service to the Appellate Court Administrator, Appellate Court Records Section, 1163 State Street, Salem, Oregon 97301-2563 or in person to the Appellate Court Administrator, Appellate Court Records Section, 1163 State Street, Salem, Oregon 97301-2563.

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

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

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

(b) Manner of Filing

(i) "Initiating document" means any document that initiates a case, including but not limited to a notice of appeal; a petition for judicial review; a petition for a writ of mandamus, habeas corpus or quo warranto; and a recommendation for discipline from the Oregon State Bar or the Commission on Judicial Fitness and Disability. As used in this rule, "initiating document" does not include a petition for review under ORAP 9.05[1] or a motion for extension of the time to file a petition for review under ORAP 9.05.

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

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

(A) A person may deliver an initiating document for filing via the U.S. Postal Service or via commercial delivery service. Filing will be complete on the date of mailing or dispatch only if the document is mailed or dispatched accordance with ORS 19.260(1)(a). For filing to be complete on the date of mailing or dispatch, the person may also be required to provide proof to the Administrator as prescribed by ORS 19.260(1)(b).[2]

(B) A person involuntarily confined in a state or local government facility may deliver an initiating document for filing via the U.S. Postal Service and the date of filing relates back to the date of delivery for mailing if the person complies with ORS 19.260(3). If the person relies on the date of delivery for mailing, the person must certify the date of delivery to the person or place designated by the facility for handling outgoing mail.

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

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

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

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

(2) Service

(a) (i) Except as provided in clause (2)(a)(ii) of this subsection, a party filing a document with the court must serve a true copy of the document on each other party or attorney for a party to the case.[3]

(ii) A party filing a motion for waiver or deferral of court fees and costs under ORS 21.682 need not serve on any other party to the case a copy of the motion or any accompanying documentation of financial eligibility.[4] After the court has ruled on the motion, if another party to the case requests a copy of the motion or documentation of financial eligibility for the purpose of challenging the court's ruling, the filing party must comply with the request but may redact protected personal information as described in ORAP 8.50(1). As used in this clause, "documentation of financial eligibility" means a document showing eligibility for a government benefit based on financial need or an affidavit or declaration showing the income, assets, and financial obligations of a party and the party's household.

(b) Except as otherwise provided by law,[5] a party may serve a document on another person as provided in ORCP 9 or by commercial delivery service.

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

(ii) Electronic service via the eFiling system is permitted only on authorized users of the eFiling system and only as provided in ORAP 16.45.

(iii) Service by email or facsimile communication is permitted only as provided in ORCP 9 F or G.

(c) Each service copy must include a certificate showing the date that the

party delivered the document for filing.

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

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

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

(e) Service on Trial Court Administrators and Transcript Coordinators

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

(ii) When a copy of a notice of appeal is required to be served on the transcript coordinator, service is sufficient if it is mailed or delivered to the office of the trial court administrator for the county in which the judgment or appealable order was entered, addressed to "transcript coordinator."

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

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[1] ORAP 1.35 defines "initiating document" for purposes of paper filing. For those purposes, the term does *not* include a petition for review under ORAP 9.05. ORAP 16.05 defines "initiating document" for purposes of eFiling and eService. For those purposes, the term *does* include a petition for review under ORAP 9.05. ORAP 16.05(7).

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

"(1)(a) Filing a notice of appeal in the Court of Appeals or the Supreme Court may be accomplished by mail or delivery. Regardless of the date of actual receipt by the

court to which the appeal is taken, the date of filing the notice is the date of mailing or dispatch for delivery, if the notice is:

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

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

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

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

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

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

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

Rule 6.10
WHO MAY ARGUE;
FAILURE TO APPEAR AT ARGUMENT

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

Oral Argument Appearance Request under ORAP 6.05.

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

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

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

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

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

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

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

Rule 8.15
AMICUS CURIAE

(1) Except as provided in subsection (8), a person[1] may appear as *amicus curiae* in any case pending before an appellate court only by permission of the court on written motion setting forth the interest of the person in the case. Any motion to appear as amicus curiae shall not contain argument on the resolution of the case and otherwise must:

(a) State whether the movant intends to present a private interest of its own or a position as to the correct rule of law that does not affect a private interest of its own;

(b) Identify the party with whom the movant would be aligned or state that the movant is unaligned;

(c) Identify the date in the case that is relevant to the timeliness of the motion (such as the date that the aligned party's brief is due); and

(d) Explain why the motion is timely relative to that date.

(2) The motion shall be submitted by an active ~~member~~licensee of the Oregon State Bar. No filing fee is required. The form of the motion shall comply with ORAP 7.10(1) and (2), and the movant shall serve it on all parties to the proceeding. Subsections (1)(d), (3), and (4) of ORAP 7.05 do not apply to a motion filed under this rule.

(3) The motion shall be accompanied by the amicus brief sought to be filed.

(a) If the court grants the motion, the date of filing for the brief relates back to the date of filing for the motion;

(b) If the court denies the motion, the brief will be deemed stricken;

(c) The form of the brief is subject to the same rules as those governing briefs of the parties, to the extent practicable.[2]

(4) In the Court of Appeals,

(a) Unless the court grants leave otherwise for good cause shown, the motion shall be filed within seven days after the due date for the party with whom the movant is aligned or, if unaligned, seven days after the due date for the opening brief.

(b) If a party obtains an extension of time for any applicable brief deadline, the time for filing a motion to appear as amicus curiae is automatically extended accordingly.

(5) In the Supreme Court, except as otherwise provided in ORAP 11.35 and ORAP 12.30:

(a) A movant may seek to appear in support of or in opposition to:

(i) A petition for review of a Court of Appeals decision, the merits of that case, or both;

(ii) A petition for a writ, the merits of that case, or both; or

(iii) The merits of any other case before the court on direct appeal, direct judicial review, or direct review, or in an original proceeding.

(b) The following apply to a motion to appear as amicus curiae in support of or opposition to a petition for review or a petition for a writ:

(i) The motion shall be filed within 14 days after the filing of the petition, unless the court grants leave otherwise for good cause shown.

(ii) The movant may, but need not, file with the motion a combined amicus brief in support of, or in opposition to, the petition and also on the merits of the case. The due date set out in subparagraph (i) applies to a combined brief filed with the motion.

(iii) If the movant does not submit a combined amicus brief with the motion, and the court grants the motion, the movant may file a brief on the merits without further leave of the court, by the applicable due date set out in paragraph (c).

(c) A motion to appear on only the merits of any case shall be filed by the following dates, unless the court grants leave otherwise for good cause shown:

(i) If the movant is aligned with a party, by the due date for that party's brief (excluding reply briefs).

(ii) If the movant is not aligned with any party, by the due date for the petitioner on review's brief on the merits or the opening brief.

(iii) If the case is before the court on a petition for review from the Court of Appeals and the petitioner on review has stated an intent to rely on the petition and the petitioner's Court of Appeals brief, regardless of the movant's alignment, within 28 days after review is allowed.

(d) If a party obtains an extension of time to file a response to a petition for review or for a writ, or for any of the brief deadlines described in paragraph (c)(i) or (ii), the time for filing a motion to appear as *amicus curiae* or the *amicus* brief is automatically extended accordingly.

(6) *Amicus curiae* may file a memorandum of additional authorities under the same circumstances in which a party may do so under ORAP 5.85.

(7) Unless the court grants leave otherwise, *amicus curiae* may not orally argue the case.[3]

(8) The State of Oregon may appear as *amicus curiae* in any case in an appellate court without permission of the court. The state shall comply with all the requirements for appearing *amicus curiae* set out in this rule, including the time within which to appear, except that, if the state is not aligned with any party, the state's amicus brief shall be due on the same date as the respondent's brief on the merits or the answering brief.

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[1] As used in this rule, "person" includes an organization.

[2] *See* ORAP Chapters 5 and 9, concerning requirements for briefs.

[3] *See* ORAP 6.10 concerning oral argument.

Rule 16.10
eFILERS

(1) Authorized eFilers

(a) Any person may register to become an eFiler.

(b) To become an eFiler, a user must create an account with the eFiling system.

(2) Conditions of Electronic Filing

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

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

(ii) register for access to the eFiling system and link the eFiler's user account with the eFiler's record in ACMS;[1]

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

(iv) furnish required information for case processing; and

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

email address.

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

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

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[1] To link a user account to a record in ACMS, an Oregon State Bar licensee ~~OSB member~~ or *pro hac vice* attorney should use the Request Attorney Access process in the system. A self-represented litigant should use the Request Case Access process.

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

Rule 16.45
ELECTRONIC SERVICE

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

(2) (a) Except as provided in subsection (3), a party eFiling a document may use the eFiling system's eService function to accomplish service of that document on any other party's attorney or on a self-represented party, if that party's attorney or the self-represented party is a registered eFiler.[1] The eFiling system will generate an email to the attorney or self-represented party being eServed that includes a link to the document that was eFiled. To access the eFiled document, the attorney or self-represented party who has been eServed must log in to the eFiling system.

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

(3) A party eFiling a document must accomplish service via paper service or other form of service permitted by ORCP 9, if:

(a) The document to be served:

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

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

jurisdiction;

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

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

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

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

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

(5) If an eFiled document is not eServed by the eFiling system because of an error in the transmission of the document or other technical problem experienced by the eFiler, the court may, upon satisfactory proof, permit the service date of the document to relate back to the date that the eFiler first attempted to eServe the document. A party must show satisfactory proof by filing and serving an accompanying letter explaining the circumstances, together with any supporting documentation.

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

Rule 16.60
MANDATORY ELECTRONIC FILING

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

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

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

(2) An active ~~member~~licensee of the Oregon State Bar who is required to file a

document using the eFiling system under subsection (1) of this rule, may obtain a waiver of that requirement as follows:

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

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

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

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

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

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

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

(ii) include in the caption of all documents filed by paper filing during the duration of the waiver the words "Exempt from eFiling per Waiver Approved [DATE]."

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

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

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

(4) If a filer submits a document by paper filing in contravention of subsection (1) of this rule and either the filer has not obtained a waiver pursuant to subsection (2), or the electronic

system is not unavailable as described in subsection (3), then the Administrator is authorized to take any of the following actions:

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

(b) Refuse to accept the document for filing.

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

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

ORAP COMMITTEE 2026
February 12 Materials

AMENDING RULE(S): Proposal # 2 -- ORAP 1.35 -- Footnote Not to Duplicate Paper Filings and eFilings; Clarify Service on Trial Court Administrators and Transcript Coordinators

PROPOSER: Daniel Parr

EXPLANATION:

This consolidates two proposals:

(1) ORAP 1.35(1)(a)(ii)(B): "Filers are submitting duplicate filings to both appellate courts. eFilers are filing paper copies and paper filers are submitting eFilings. Duplicate filings require ACRS to review each document to ensure it isn't an amended filing or a different document. This requires significant resources. ACRS is recommending the addition of a footnote to [ORAP 1.35(1)(a)(ii)](B) explaining that filers should not submit both a paper and eFiled copy of a document unless such practice is provided for in the rules or a party is directed by the court to do so."

(2) ORAP 1.35(2)(e): "[C]hanges to 1.35(2)(e) are to provide clarification for self-represented litigants on how to serve filings where service on the trial court administrator and transcript coordinator are required."

RULE AS AMENDED:

Rule 1.35
FILING AND SERVICE

(1) Filing

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

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

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

(A) Unless an exception applies under ORAP 16.30 or ORAP

16.60(2), an active licensee of the Oregon State Bar must deliver any document for filing using the appellate eFiling system.

(B) Except as otherwise provided in ORAP 16.30 or 16.60(2), any other person may file any document by either the eFiling system or by paper filing. Paper filing should be made either by delivering the document via U.S. Postal Service or commercial delivery service to the Appellate Court Administrator, Appellate Court Records Section, 1163 State Street, Salem, Oregon 97301-2563 or in person to the Appellate Court Administrator, Appellate Court Records Section, 1163 State Street, Salem, Oregon 97301-2563.[1]

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

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

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

(b) Manner of Filing

(i) "Initiating document" means any document that initiates a case, including but not limited to a notice of appeal; a petition for judicial review; a petition for a writ of mandamus, habeas corpus or quo warranto; and a recommendation for discipline from the Oregon State Bar or the Commission on Judicial Fitness and Disability. As used in this rule, "initiating document" does not include a petition for review under ORAP 9.05~~1~~[2] or a motion for extension of the time to file a petition for review under ORAP 9.05.

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

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

(A) A person may deliver an initiating document for filing via the U.S. Postal Service or via commercial delivery service. Filing will be

complete on the date of mailing or dispatch only if the document is mailed or dispatched accordance with ORS 19.260(1)(a). For filing to be complete on the date of mailing or dispatch, the person may also be required to provide proof to the Administrator as prescribed by ORS 19.260(1)(b).[2]

(B) A person involuntarily confined in a state or local government facility may deliver an initiating document for filing via the U.S. Postal Service and the date of filing relates back to the date of delivery for mailing if the person complies with ORS 19.260(3). If the person relies on the date of delivery for mailing, the person must certify the date of delivery to the person or place designated by the facility for handling outgoing mail.

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

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

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

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

(2) Service

(a) (i) Except as provided in clause (2)(a)(ii) of this subsection, a party filing a document with the court must serve a true copy of the document on each other party or attorney for a party to the case.[~~3~~4]

(ii) A party filing a motion for waiver or deferral of court fees and costs under ORS 21.682 need not serve on any other party to the case a copy of the motion or any accompanying documentation of financial eligibility.[~~4~~5] After the court has ruled on the motion, if another party to the case requests a copy of the motion or documentation of financial eligibility for the purpose of challenging

the court's ruling, the filing party must comply with the request but may redact protected personal information as described in ORAP 8.50(1). As used in this clause, "documentation of financial eligibility" means a document showing eligibility for a government benefit based on financial need or an affidavit or declaration showing the income, assets, and financial obligations of a party and the party's household.

(b) Except as otherwise provided by law,[56] a party may serve a document on another person as provided in ORCP 9 or by commercial delivery service.

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

(ii) Electronic service via the eFiling system is permitted only on authorized users of the eFiling system and only as provided in ORAP 16.45.

(iii) Service by email or facsimile communication is permitted only as provided in ORCP 9 F or G.

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

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

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

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

(e) Service on Trial Court Administrators and Transcript Coordinators

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

(ii) When a copy of a notice of appeal, or any other document filed, is required to be served on the transcript coordinator, service is sufficient if it is mailed or delivered to the office of the trial court administrator for the county in which the judgment or appealable order was entered, addressed to "transcript coordinator."

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

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[1] Filers should not submit both a paper and eFiled copy of a document unless such practice is provided for in the rules or a party is directed by the court to do so.

[2] ORAP 1.35 defines "initiating document" for purposes of paper filing. For those purposes, the term does *not* include a petition for review under ORAP 9.05. ORAP 16.05 defines "initiating document" for purposes of eFiling and eService. For those purposes, the term *does* include a petition for review under ORAP 9.05. ORAP 16.05(7).

~~2~~3 As of January 1, 2024, ORS 19.260(1) provides:

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

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

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

"(b)(A) Proof of the date of mailing or dispatch under this subsection must be certified by the party filing the notice and filed thereafter with the court to which the appeal is taken. Any record of mailing or dispatch from the United States Postal Service or the commercial delivery service showing the date that the party initiated mailing or dispatch is sufficient proof of the date of mailing or dispatch. If the notice is received by the court on or before the date by which the notice is required to be filed, the party filing

the notice is not required to file proof of mailing or dispatch.

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

~~3~~4 Whenever these rules authorize or require service of a copy of any document on the Attorney General, the copy must be served at this address: Attorney General of the State of Oregon, Office of the Solicitor General, 400 Justice Building, 1162 Court Street, NE, Salem, Oregon 97301-4096.

~~4~~5 *See* Chief Justice Order No. 18-024 (order adopted pursuant to ORS 21.682 prescribing standards and practices for waiver or deferral of court fees and costs) (available at https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll10/id/263/rec/1).

~~5~~6 *See, e.g.*, ORS 183.482(2), relating to cases arising under the Administrative Procedures Act, which requires service of petitions for judicial review by registered or certified mail, and ORS 197.850(4), relating to judicial review of Land Use Board of Appeals orders, which requires service of petitions for judicial review by first class, registered, or certified mail.

ORAP COMMITTEE 2026
February 12 Materials

AMENDING RULE(S): Proposal # 4 -- ORAP 1.45 -- Filings Must Not Use Highlights or Color Text

PROPOSER: Daniel Parr

EXPLANATION:

"Litigants are filing documents through the eFiling system with color highlighting and color text."

RULE AS AMENDED:

Rule 1.45
FORM REQUIREMENTS

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

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

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

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

(3) Except as otherwise provided in ORAP 5.05, parties may prepare any document to be filed in an appellate court using either uniformly spaced type (such as produced by typewriters) or proportionally spaced type (such as produced by commercial printers and many computer printers). Uniformly spaced type must not exceed 10 characters per inch (cpi) for both the text of the thing filed and footnotes. If proportionally spaced type is used, it must not be smaller than 13 point for both the text of the thing filed and footnotes. The text must be black, except hyperlinks, and include no color highlighting on any part of the text. This subsection does not apply to the record on appeal or review.

(4) Parties using paper filing for any document are:

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

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

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

[1] See ORS 7.250.

ORAP COMMITTEE 2026
February 12 Materials

AMENDING RULE(S): Proposal # 5 -- ORAP 2.35 -- Caption Requirement for Certain Supreme Court Motions for Summary Determination of Appealability

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

EXPLANATION:

The Supreme Court can receive motions for summary determinations of appealability in the context of either a petition for review or on a direct appeal. ORAP 2.35, which addresses such motions, requires a note in the caption for petitions for review, but not for direct appeals. Adding a caption for such motions will help flag the matter for speedy processing.

RULE AS AMENDED:

Rule 2.35
SUMMARY DETERMINATION OF APPEALABILITY AND EXPEDITED SUPREME COURT REVIEW

(1) As used in this rule, "decision" means any oral or written ruling of a circuit court or the Tax Court.

(2) The Supreme Court in a direct appeal of a decision to that court and the Court of Appeals in an appeal of a decision to that court may make a summary determination of whether the decision is appealable.

(3) (a) If the court makes a summary determination of appealability, the order or opinion expressing the court's determination shall expressly state that the determination is a summary determination under ORS 19.235(3). The order or opinion also shall contain a notice informing the parties that the order or opinion is a summary determination of appealability under ORS 19.235(3), that the determination is subject to review or reconsideration by the Supreme Court, that the petition for review shall be filed within 14 days after the order or opinion or such shorter time as may be ordered by either court and that the Supreme Court will expedite its consideration of the petition.

(b) If an appellate determination of appealability does not expressly state that it is a summary determination of appealability under ORS 19.235(3), then the

determination is not subject to ORS 19.235(3) or this rule.

(4) (a) Unless a shorter period of time is ordered by the Court of Appeals or the Supreme Court, a petition for review of a summary determination by the Court of Appeals or a petition for reconsideration of a summary determination by the Supreme Court shall be filed within 14 days after the date of the appellate court's determination. The caption of the petition shall prominently display the words "Expedited Summary Determination of Appealability Pursuant to ORAP 2.35(3)." The Supreme Court shall expedite its consideration of a petition for review or reconsideration of a summary determination of appealability.

(b) The caption of a motion for summary determination of appealability filed in a direct appeal in the Supreme Court shall prominently display the words "Expedited Summary Determination of Appealability Pursuant to ORAP 2.35(1)."

(5) If the appellate court has determined that the decision is not appealable and has dismissed the appeal, and the opportunity for review or reconsideration of that determination as provided in this rule has been exhausted or has expired, the Administrator shall immediately issue the appellate judgment.

See generally ORS 19.235.

ORAP COMMITTEE 2026
February 12 Materials

AMENDING RULE(S): Proposal # 7 -- ORAP 3.30 -- Transcript Preparation -- Modifications re Service on Transcript Coordinator

PROPOSER: Daniel Parr

EXPLANATION:

This consolidates two separate proposals by the Appellate Court Records Section:

(1) "The change to 3.30(5) modifies the rule to track with who should actually be served."

(2) "This proposed change will reduce unnecessary duplicate motions for time. It creates a new requirement that when a party files a motion for extension of time for the preparation of the transcript, that they serve the transcriber and transcript coordinator."

RULE AS AMENDED:

Rule 3.30
EXTENSION OF TIME FOR PREPARATION OF TRANSCRIPT

(1) Except as provided in ORAP 3.40(3), only the appellate court may grant an extension of time for the preparation of a transcript.

(2) A request for an extension of time to prepare a transcript may be filed by:

(a) a party responsible for causing the transcript to be prepared,

(b) the transcriber or court reporter (in audio and video record cases) responsible for preparing a transcript if the party responsible for causing the transcript to be prepared has made payment arrangements, or

(c) the transcript coordinator if the transcript coordinator has not assigned a transcriber.

(3) A request for an extension of time shall include the amount of time sought, the number of previous extensions obtained and the reason for the extension of time.

(4) A parties' request for an extension of time shall show proof of service on the transcriber and, for the second or any subsequent request for extension of time, on the transcript coordinator. If all or part of the need for an extension of time is the failure to make satisfactory arrangements for payment of the transcript, the request shall so state. If a party makes a request for an extension of time under this rule, the party shall show why appropriate arrangements have not been made. The court in its discretion may deny the extension of time and direct that the appeal proceed without the transcript.

(5) A court reporter's or transcriber's request for an extension of time shall include the date on which the transcript was ordered, the number of days of proceedings designated on appeal, the approximate number of pages of transcript to be prepared, and information about other transcripts due on appeal. The request shall be substantially in the form illustrated in Appendix 3.30 and shall show proof of service on the parties and, for the second or any subsequent request for extension of time, on the transcript coordinator. ~~trial court administrator.~~

(6) Any party may file an objection to a court reporter's or transcriber's request for an extension of time within 14 days after the request is filed. The objection must be served on all other parties, the court reporter or transcriber, and the trial court administrator. An objection received after the court has granted the request will be treated as a motion for reconsideration of the ruling. On reconsideration, if the court modifies the extension of time, the court reporter or transcriber and the parties will be notified; otherwise, the objection will be noted and placed in the file.

_____

See generally ORS 19.395.

ORAP COMMITTEE 2026
February 12 Materials

AMENDING RULE(S): Proposal # 8 -- New ORAP 3.43 -- Process to Transfer Transcripts Between Appeals

PROPOSER: Daniel Parr

EXPLANATION:

"This proposed rule establishes a formal process for filing a notice to transfer transcripts between appellate cases. It applies only to transcripts that have already been prepared and are in the custody of the Appellate Court Administrator. Currently, there are no existing rules or guidelines for this process."

RULE AS AMENDED:

Rule 3.43
TRANSFER OF PREVIOUSLY PREPARED TRANSCRIPTS BETWEEN APPEALS

(1) A transcript may be transferred from one appellate case to a related case, if:

(a) A party to the appeal or the court determines that the transcript is relevant to the current appeal;

(b) The transcript has been previously prepared and filed in a prior appellate case; and

(c) The transcript is currently in the custody of the Appellate Court Administrator.

(2) Request to Transfer Transcripts

(a) A party may request to transfer a previously prepared transcript:

(i) Within the designation of record included in the Notice of Appeal; or

(ii) By filing a separate written notice.

(b) A transcript coordinator may request the transfer of a previously prepared transcript:

(i) Within a notice to transcriber assignment; or

(ii) By filing a separate written notice.

(c) Any notice requesting a transcript transfer must:

(i) Identify the prior appellate case in which the transcript was filed;

(ii) Specify the hearing dates of the transcript to be transferred; and

(iii) Be served on all parties to the current appeal, as well as any transcript coordinator or assigned transcriber.

ORAP COMMITTEE 2026
February 12 Materials

AMENDING RULE(S): Proposal # 9 -- ORAP 3.50, 4.20(10)(b) -- Modify Retention Rules Regarding Electronic Records Received from Agencies and Trial Courts

PROPOSER: Daniel Parr

EXPLANATION:

"The court's current process is to delete electronic records when the appellate judgment is issued, except when a case which shares the record is still ongoing. Modifies ORAP 3.50 and 4.20(10)(b) to align with current practices and records retention in our largely digital records management system."

RULE AS AMENDED:

Rule 3.50
RETURN OF RECORDS AND EXHIBITS

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

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

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

Rule 4.20
RECORD ON JUDICIAL REVIEW

* * * * *

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

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

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

ORAP COMMITTEE 2026
February 12 Materials

AMENDING RULE(S): Proposal # 10 -- ORAP 5.05, 7.10 -- Captions for Briefs and Motions Must Note if Oral Argument Within 5 Days

PROPOSER: Kendra M. Matthews, Appellate Legal Counsel, Supreme Court

EXPLANATION:

ORAP 5.85 has a provision that requires a party to notify the court if it is filing additional authorities less than five days before oral argument. *See* ORAP 5.85(2)(d) ("If filed less than five business days before oral argument, shall include in the caption the words 'ORAL ARGUMENT SCHEDULED FOR [DATE].'") It would be useful to have a similar provision for any pleading filed close to oral argument. In an effort to advance that goal, this proposal suggests adding such a requirement to the cover of briefs and motions.

RULES AS AMENDED:

I. Amend ORAP 5.05

Rule 5.05
SPECIFICATIONS FOR BRIEFS

*****

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

*****

(d) The front cover must set forth the full title of the case, the appropriate party designations as the parties appeared below and as they appear on appeal, the case number assigned below, the case number assigned in the appellate court, designation of the party on whose behalf the brief is filed, the court from which the appeal is taken, the name of the judge thereof, and the litigant contact information required by ORAP 1.30. The lower right corner of the brief must state the month and year in which the brief was filed. If filed less than five business

days before oral argument, the brief shall include in the caption the words "ORAL ARGUMENT SCHEDULED FOR [DATE]."[4]

*****

II. Amend ORAP 7.010

Rule 7.10
PREPARATION, FILING,
AND SERVICE OF MOTIONS

*****

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

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

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

(5) If filed less than five business days before oral argument, the motion or response shall include in the caption the words "ORAL ARGUMENT SCHEDULED FOR [DATE]."

(~~5~~6) A motion or response that is confidential, filed under seal, or otherwise exempt from disclosure[3] must include:

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

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

(~~6~~7) A motion or response that includes an attachment consisting of material that is confidential, sealed, or otherwise exempt from disclosure[4] must comply with the requirements of ORAP 8.52.

ORAP COMMITTEE 2026
February 12 Materials

AMENDING RULE(S): Proposal # 14 -- ORAP Rules 5.50, 6.05, 6.10, 6.15, and 6.30 -- Rules re: Court of Appeals Argument

PROPOSER: [Temporary rules to be made permanent]

EXPLANATION:

These temporary rules were adopted by the Court of Appeals through Chief Judge Order 25-01. The Chief Judge Order gives the following summary of the amendments:

> "The purpose of the amendments is to update the oral argument practices of the Court of Appeals to account for new technologies that allow for oral arguments to be conducted in a hybrid format, in addition to fully in-person and remote formats; to facilitate the court's ability to more efficiently manage its workflow and set cases for argument by requiring litigants to inform the court whether and in what format they intend to argue an appeal earlier in the appellate process than previously required; to allow for oral argument by self-represented litigants; and to provide the processes for oral arguments by self-represented litigants, including the processes that apply to litigants who are incarcerated."

Note: The versions of ORAP 6.05 proposed to be made permanent deletes ORAP 6.05(4)(a) and 6.05(7), as those provisions were time-limited and are longer appropriate for current cases.

RULES AS AMENDED:

Rule 5.50
THE EXCERPT OF RECORD

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

(2) The excerpt of record must contain:[2]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule 6.05
REQUEST FOR ORAL ARGUMENT;
SUBMISSION WITHOUT ARGUMENT

(1) This rule applies to proceedings in the Court of Appeals and governs the process of requesting oral argument and expressing a preference for the format (in- person, by remote means, or hybrid, as described in ORAP 6.30).

(2) Any party who intends to appear at oral argument must file an Oral Argument Appearance Request in accordance with this rule. An Oral Argument Appearance Request may be filed jointly by all parties, or individually, in one of the forms described in subsection (3) of this rule.

(3) Forms

(a) Joint Request. The parties on appeal are encouraged to file a joint Oral Argument Appearance Request that addresses the requests and format preferences for all parties. A joint request for oral argument shall contain the following information:

(i) The name of each attorney or self-represented party who will argue the case.

(ii) With respect to each party that intends to appear, whether the party prefers to appear in person or appear remotely.

(b) Individual Requests. Although joint requests are preferred, any party may file an individual Oral Argument Appearance Request that either requests oral argument on behalf of the party or states an appearance preference if the party does not request oral argument but intends to appear if another party requests oral argument. An individual request of either type shall contain the following information:

(i) The name of the attorney or self-represented party who will argue the case for the party filing the Oral Argument Appearance Request.

(ii) Whether the party prefers to appear in person or appear remotely.

(4) Timelines for submitting an Oral Argument Appearance Request.

(a) With the exception of land use cases subject to ORAP 4.60 through 4.74, and juvenile dependency, termination of parental rights, and adoption cases subject to ORAP 10.15, which are governed by separate procedures in paragraphs (c) and (d) of this subsection, an Oral Argument Appearance Request shall be filed no later than 14 days after the filing of the answering brief or notification of waiver of appearance by the last respondent, whichever is later. If more than one answering brief is filed, the 14-day period runs from the date on which the last answering brief is filed.

(b) Juvenile and adoption cases subject to ORAP 10.15.

(i) An individual Oral Argument Appearance Request by an appellant must be filed at the time that the appellant files the opening brief.

(ii) An individual Oral Argument Appearance Request by a respondent must be filed at the time the respondent files the answering brief.

(iii) A joint Oral Argument Appearance Request must be filed within 3 days of the filing of the answering brief.

(iv) If an appellant on appeal has requested oral argument, and no respondent requests oral argument, the appellant on appeal may waive oral argument by notifying the court that the appellant waives oral argument within 3 days of the filing of the answering brief.

(c) Land use cases subject to ORAP 4.60 through ORAP 4.74.

(i) An Oral Argument Appearance Request, whether joint or individual, must be filed within 7 days of the filing of the petition for judicial review.

(ii) If one party has requested oral argument, and no other party requests oral argument, the party that requested oral argument may waive oral argument by notifying the court within 3 days of the filing of the answering brief.

(5) Submission will occur as follows:

(a) If no party files a timely request for oral argument, the case shall be submitted on the briefs. The court will notify the parties when the case is submitted for decision.

(b) If all parties that have requested oral argument subsequently notify the court that they waive oral argument, the case shall be submitted on the briefs.

(c) Notwithstanding paragraphs (a) and (b) of this subsection, if the court determines that oral argument will aid the court's decision-making process, the court may order that the case be set for oral argument.

(d) If a timely request for oral argument is made, then the case will be set for oral argument in due course and the Administrator will send the parties notice of the date and time that argument has been scheduled. The case will be submitted to the court upon completion of oral argument.

(e) Subject to paragraph (5)(c) 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.

(6) Argument Format

(a) Under ORAP 6.30, the court holds oral argument in three formats: (i) in

person, where all litigants appear in person; (ii) by remote means, where all litigants appear remotely; and (iii) hybrid, in which at least one litigant appears remotely, and at least one litigant appears in person.[1]

(b) Except as provided below, in setting oral arguments, the court in general will schedule oral argument and submission in a manner that accounts for the preferences expressed by the litigants in their Oral Argument Appearance Requests as follows:

(i) If all parties express a preference for argument by remote means, the argument will be held by remote means;

(ii) if all parties express a preference for in-person oral argument, the argument will be held in-person;

(iii) if the parties differ in their preferences, the argument will be held in a hybrid format.

(iv) In the event that some, but not all, parties express a preference for the format of argument, the court in general will set argument in accordance with the preferences expressed and the court's needs.

(c) In all cases involving a self-represented party who is in custody, oral argument will be held by remote means.

(d) If the court orders oral argument in a case in which no party has requested oral argument, oral argument ordinarily will be held by remote means.

(e) In any case, and notwithstanding the preferences expressed by the parties, the court may determine that, under the circumstances, the needs of the court will be best served by a particular format of argument and may direct that argument will occur in that format.

(f) Where, in the court's judgment, inclement weather or other conditions make in-person argument difficult or unsafe, the court will, when possible, hold all scheduled arguments by remote means rather than postponing arguments.

(g) Except for emergency motions, the court will not entertain motions regarding the format of oral argument.

[1] In any of the formats, one or more judges may participate through remote means. Generally, at least two judges will participate in person for hybrid and in-person arguments.

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

~~(2) (a) The Administrator will send the parties notice of the date that a case is scheduled to be submitted to the court ("the submission date"). The notice will include a form "Response to Notice of Submission" requesting the information described below. Within 14 days of receiving the notice, any party requesting oral argument must complete, file, and serve on every party to the appeal the form "Response to Notice of Submission." The information required by the form Response to Notice of Submission is the following:~~

~~(i) that the party requests oral argument;~~

~~(ii) the name of the attorney or self-represented party who will argue the case;~~

~~(iii) whether the party requests in-person oral argument as described in ORAP 6.30(1)(a);~~[1]

~~(iv) whether the party has conferred with all other parties regarding in-person oral argument and, if so, whether any party objects.~~

~~(b) Submission will occur as follows:~~

~~(i) If no party files a timely request for oral argument, the case shall be submitted on the briefs on the submission date without oral argument, unless the court directs otherwise.~~

~~(ii) Except as otherwise provided in subparagraph (iii), if a timely request for oral argument is made, then the case will be set for remote argument pursuant to ORAP 6.30 on the submission date and all parties who have filed a brief may argue.~~

~~(iii) Unless the court determines that remote argument better meets the needs of the court, (a) if a party submits a timely request for in-person argument, and certifies that the party has conferred with all other parties and that no party objects to in-person argument, or (b) if all parties submit requests for in-person argument, then the case will be set for in-person argument pursuant to ORAP 6.30 on the submission date and all parties who have filed a brief may argue.~~

~~(iv) Notwithstanding subparagraph (iii), a party may move the court for an order that an oral argument should proceed in person. The motion must be filed within seven days after the deadline for filing a Response to Notice of Submission and must explain the circumstances that support the request and~~

~~demonstrate good cause for arguing in-person; good cause does not include a mere preference for in-person argument. Any party may file a response to the motion; the response must be filed within seven days after the filing of the motion.~~

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

~~(4) Notwithstanding subsection (2) of this rule, 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.~~

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

Rule 6.10
WHO MAY ARGUE;
FAILURE TO APPEAR AT ARGUMENT

(1) A party may present oral argument only if the party has filed a brief and filed an Oral Argument Appearance Request under ORAP 6.05.

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

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

(4) ~~Only~~ In the Court of Appeals, only self-represented parties and active members of the Oregon State Bar shall argue unless the court, on motion filed not less than 21 days before the date for argument, orders otherwise. If the court has allowed a lawyer from another jurisdiction to appear on appeal for a particular case under ORAP 8.10(4), the lawyer does not

need leave of the court to participate in oral argument of the case.

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

(6~~5~~) (a) After any party has filed and served a request for oral argument pursuant to ORAP 6.05(2), any party who decides to waive oral argument or cannot attend oral argument shall give the court and all other parties participating in oral argument at least 48 hours' notice that the party will not be appearing for oral argument.

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

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

Rule 6.15
PROCEDURE AT ORAL ARGUMENT

(1) In all cases in the Supreme Court:

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

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

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

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

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

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

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

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

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

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

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

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

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

(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; and~~.~~

(c) "Hybrid" for the purposes of the arguments in the Court of Appeals refers to an oral argument in which at least one litigant appears in person, and at least one

litigant appears by remote means.

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

(a) Oral Argument in the Court of Appeals will be scheduled in the manner set forth in ORAP 6.05. ~~Except as otherwise provided in ORAP 6.05(2)(b)(iii), ORAP 6.05(2)(b)(iv), or ORAP 6.05(3), the case will be scheduled for argument by remote means.~~

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

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

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

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

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

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

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

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

[1] *See* Chief Justice Order 24-018 ~~22-020~~ (providing that the principal location for the sitting of the Court of Appeals is currently 1163 State Street, Salem, OR 97301) or any subsequent order of the Chief Justice that amends or supersedes that order.

ORAP COMMITTEE 2026
February 12 Materials

AMENDING RULE(S): Proposal # 18 -- ORAP 6.25 -- Motions to Reconsider Court of Appeals Decisions Must Be Filed Within 14 Days

PROPOSER: Benjamin Gutman

EXPLANATION:

"Currently, there is a clear deadline for a petition for reconsideration of an order from the Appellate Commissioner (14 days -- see ORAP 7.55(4)(a) (allowing reconsideration of a decision of the appellate commissioner under ORAP 6.25); ORAP 6.25(2) (providing 14-day deadline for petition for reconsideration)), but there's not one for a motion to reconsider (see ORAP 6.25(5) (providing no deadline for a motion to reconsider). Our recommendation is to amend ORAP 6.25(5) to parallel what's in subsection (2) of that rule, by having a 14-day deadline."

[***Editor's Note:*** Although the explanation refers specifically to motions to reconsider orders of the Appellate Commissioner, ORAP 6.25(5) applies to any motion to reconsider an order of the Court of Appeals.]

RULE AS AMENDED:

Rule 6.25
RECONSIDERATION BY COURT OF APPEALS

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

(a) A claim of factual error in the decision;

(b) A claim of error in the procedural disposition of the appeal requiring correction or clarification to make the disposition consistent with the holding or rationale of the decision or the posture of the case below;

(c) A claim of error in the designation of the prevailing party or award of costs;

(d) A claim that there has been a change in the statutes or case law since the decision of the Court of Appeals; or

(e) A claim that the Court of Appeals erred in construing or applying the law. Claims addressing legal issues already argued in the parties' briefs and addressed by the Court of Appeals are disfavored.

(2) A petition for reconsideration shall be filed within 14 days after the decision. The petition shall have attached to it a copy of the decision for which reconsideration is sought. The form of the petition and the manner in which it is served and filed shall be the same as for motions generally, except that the petition shall have a title page printed on plain white paper and containing the following information:

(a) The full case caption, including appropriate party designations for the parties as they appeared in the court from which the appeal was taken and as they appear on appeal, and the trial and appellate court case numbers; and

(b) A title designating the party filing the petition, such as "Appellant's Petition for Reconsideration" or "Respondent's Petition for Reconsideration."

(3) The filing of a petition for reconsideration is not necessary to exhaust remedies or as a prerequisite to filing a petition for review.

(4) If a response to a petition for reconsideration is filed, the response shall be filed within seven days after the petition for reconsideration was filed. The court will proceed to consider a petition for reconsideration without awaiting the filing of a response, but will consider a response if one is filed before the petition for reconsideration is considered and decided.[1]

(5) A request for reconsideration of any other order of the Court of Appeals ruling on a motion or an own motion matter shall be entitled "motion for reconsideration." A motion for reconsideration must be filed within 14 days after the decision, and is subject to ORAP 7.05 regarding motions in general.

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[1] *See* ORAP 9.05(2) regarding the effect of a petition for reconsideration by the Court of Appeals on the due date and consideration of a petition for review by the Supreme Court.

ORAP COMMITTEE 2026
February 12 Materials

AMENDING RULE(S): Proposal # 24 -- ORAP 12.25 -- Terminology and Cross-Reference Changes to Bar Proceedings Rule

PROPOSER: Kendra M. Matthews, Appellate Legal Counsel, Supreme Court

EXPLANATION:

Change reference to "interlocutory" suspensions to "interim" suspensions to match Oregon State Bar Rules of Procedure. Add BR 3.4 to ORAP 12.25(2) because it also provides for interim suspensions. See BR 3.4 (Allegations of Criminal Conduct Involving Licensees). Update rule numbers referenced to match relevant rules (administrative change).

RULE AS AMENDED:

Rule 12.25
BAR ADMISSION, REINSTATEMENT, AND DISCIPLINARY PROCEEDINGS

(1) As used in this rule:

(a) The following are parties:

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

(ii) The respondent in a disciplinary or interim~~interlocutory~~ suspension proceeding.

(iii) The applicant in a contested reinstatement or contested admission proceeding.

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

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

(2) Interim~~locutory~~ Suspension Proceedings, Review of Adjudicator Order

(a) A request concerning review of an order entered by the Bar's Disciplinary Board Adjudicator in an interim~~interlocutory~~ suspension proceeding under BR 3.1 or BR 3.4 shall be filed with the Administrator, with proof of service on all parties and the Disciplinary Board, within 14 days after entry of the order.

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

(c) If the request seeks de novo review of the record of proceedings before the Adjudicator, upon receipt of service of the request, the Bar's Disciplinary Counsel shall file the record with the Administrator. The preparation, transmission, and service of the record is subject to ORAP 4.20, except that subsections (8) and (9) do not apply. Upon receipt of the record, the Administrator must send written notice to the parties.

(3) Disciplinary and Contested Reinstatement Proceedings, Review of Trial Panel Opinion

(a) A request concerning review of a disciplinary proceeding or a trial panel opinion in a disciplinary proceeding under BR 10.1 shall be filed with the Administrator, with proof of service on all parties, within 30 days after written notice by the Bar's Disciplinary Board Clerk of receipt of the opinion.

(b) A trial panel opinion in a contested reinstatement proceeding under BR 10.3, following court referral under BR 8.~~9~~8, shall be filed with the Administrator, with proof of service on all parties, upon conclusion of the hearing.

(c) Upon receipt of a request filed under subparagraph (a) or a trial panel opinion filed under subparagraph (b), the Bar's Disciplinary Counsel shall file the record of the proceedings before the trial panel with the Administrator, pursuant to BR 10.4. The preparation, transmission, and service of the record is subject to ORAP 4.20, except that subsections (8) and (9) do not apply. Upon receipt of the record, the Administrator must send written notice to the parties.

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

(a) A petition concerning review of a Board of Bar Examiners decision in a contested admission, character and fitness review proceeding under RFA 9.13~~60~~(1) shall be filed with the Administrator, with proof of service on all parties, within 30 days after the date that the applicant received notice of the Board's decision, pursuant to RFA 9.12 ~~55~~(7).

(b) Within 14 days following receipt of service of a petition, the Board must file the record of proceedings before the Board, pursuant to RFA 9.13~~60~~(2). The preparation, transmission, and service of the record is subject to ORAP 4.20, except that subsections (8) and (9) do not apply. Upon receipt of the record, the Administrator must

send written notice to the parties.

(5) Briefing and Argument

(a) A brief in any proceeding described in subparagraphs (3) or (4) must conform to ORAP 5.05, ORAP 5.10, ORAP 5.35, and ORAP 9.17(5), except that no excerpt of record is required. The brief must show proof of service on all parties to the proceeding. The Bar shall be served by service on the Bar's Disciplinary Counsel.

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

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

(ii) An answering brief shall be due 28 days after filing of the opening brief.

(iii) A reply brief, if any, shall be due 14 days after filing of the answering brief.

(c) In any proceeding described in subparagraph (3), if a respondent files a petition but then fails to file a brief within the time allowed, the Bar must either:

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

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

(d) If a proceeding described in subparagraphs (3) or (4) is argued orally, the party who files the opening brief shall argue first.

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

ORAP COMMITTEE 2026
February 12 Materials

AMENDING RULE(S): Proposal # 25 -- ORAP 12.27(3) -- Change Terminology in Caption for Judicial Disability Proceedings

PROPOSER: Kendra M. Matthews, Appellate Legal Counsel, Supreme Court

EXPLANATION:

Currently, ORAP 12.27(3), which is titled, "Temporary Disability Proceedings Initiated by Chief Justice Under ORS 1.425," relates to proceedings initiated by the Chief Justice Under ORS 1.425. ORS 1.425(1) provides:

> Upon complaint from the Chief Justice of the Supreme Court as provided in ORS 1.303, and after such investigation as the Commission on Judicial Fitness and Disability considers necessary, the commission may:
>
> (a) Proceed as provided in ORS 1.420; or
>
> (b) If the investigation under this subsection indicates that the subject judge may have a temporary disability, hold a hearing pursuant to subsection (2) of this section to inquire into the alleged disability, or request the Supreme Court to appoint three qualified persons to act as masters, to hold a hearing pursuant to subsection (2) of this section and maintain a record on the matter referred to them and to report to the commission on the alleged disability.

While subsection (1)(b) relates to procedures relating to a "temporary disability," subsection (1)(a) relates to a Chief Justice recommendation moving to a full proceeding under ORS 1.420. Accordingly, the proposal is to remove the word "temporary" from ORAP 12.27(3)'s title.

Note: there are other references to "temporary" in the ORAP. Those references are appropriate. (For instance, ORS 1.425(5) provides for a Supreme Court order temporarily suspending a judge; ORAP 12.27(3)(b) relates to that statutory provision.)

RULE AS AMENDED:

Rule 12.27
JUDICIAL DISABILITY AND CONDUCT PROCEEDINGS

*****

(3) ~~Temporary~~ Disability Proceedings Initiated by Chief Justice Under ORS 1.425.

(a) Review of Commission's Recommendation

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

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

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

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

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

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

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

(b) Temporary Suspension Under ORS 1.425(5)

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

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

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

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

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

(c) Consent to Treatment Under ORS 1.425(4)(a)

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

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

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

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[1] *See generally* ORS 1.430.

* *See* ORS 1.440(1).