

**ORAP COMMITTEE 2026**  
**February 12 Agenda**

**Technical Agenda and Materials Only**

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** **February 12 Materials**

**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]

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### **EXPLANATION:**

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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')."

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### **RULES AS AMENDED:**

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#### **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.<sup>1</sup>

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

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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.

<sup>1</sup> See also ORAP 16.10(2)(a)(v), regarding an updated email address for an Oregon State Bar memberlicensee 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 memberlicensee 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<sup>1</sup> 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).<sup>2</sup>

(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.<sup>3</sup>

(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.<sup>4</sup> 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,<sup>5</sup> 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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<sup>1</sup> 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).

<sup>2</sup> 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."

<sup>3</sup> 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.

<sup>4</sup> 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> ).

<sup>5</sup> 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

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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 memberslicensees 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 memberslicensees 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<sup>1</sup> 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.<sup>2</sup>
- (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.<sup>3</sup>

(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.

<sup>1</sup> As used in this rule, "person" includes an organization.

<sup>2</sup> See ORAP Chapters 5 and 9, concerning requirements for briefs.

<sup>3</sup> 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;<sup>1</sup>

(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.<sup>2</sup>

(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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<sup>1</sup> 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.

<sup>2</sup> 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.<sup>1</sup> 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 ~~memberlicensee~~ of the Oregon State Bar and is not a registered eFiler, or is a ~~memberlicensee~~ 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.

<sup>1</sup> 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 ~~memberlicensee~~ 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 ~~memberlicensee~~ of the Oregon State Bar who is required to file a  
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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

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### **EXPLANATION:**

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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."

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### **RULE AS AMENDED:**

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#### **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

Proposal # 2 -- ORAP 1.35 -- Footnote Not to Duplicate Paper Filings and eFilings; Clarify Service on Trial Court Administrators and Transcript Coordinators

[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.<sup>1</sup>

(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](#)<sup>+2</sup> 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\(1\)\(b\)](#).<sup>2</sup>

(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.<sup>34</sup>

(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.<sup>45</sup> 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,<sup>§6</sup> 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.

<sup>1</sup> 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.

<sup>2</sup> 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).

<sup>23</sup> 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."

<sup>34</sup> 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.

<sup>45</sup> 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> ).

<sup>56</sup> 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

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**EXPLANATION:**

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

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**RULE AS AMENDED:**

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**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.<sup>1</sup>

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

<sup>1</sup> 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)

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**EXPLANATION:**

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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.

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**RULE AS AMENDED:**

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**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

Proposal # 5 -- ORAP 2.35 -- Caption Requirement for Certain Supreme Court Motions for Summary Determination of Appealability  
Page 1

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.

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*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

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**EXPLANATION:**

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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."

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**RULE AS AMENDED:**

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**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.

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*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

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**EXPLANATION:**

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"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."

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**RULE AS AMENDED:**

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**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

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### **EXPLANATION:**

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"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."

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### **RULE AS AMENDED:**

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#### **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.

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

(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

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**EXPLANATION:**

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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.

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**RULES AS AMENDED:**

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**I. Amend ORAP 5.05**

**Rule 5.05**  
**SPECIFICATIONS FOR BRIEFS**

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(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]."<sup>4</sup>

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## **II. Amend ORAP 7.010**

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

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(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]."

(56) A motion or response that is confidential, filed under seal, or otherwise exempt from disclosure<sup>3</sup> 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.

(67) A motion or response that includes an attachment consisting of material that is confidential, sealed, or otherwise exempt from disclosure<sup>4</sup> must comply with the requirements of ORAP 8.52.

Proposal # 10 -- ORAP 5.05, 7.10 -- Captions for Briefs and Motions Must Note if Oral  
Argument Within 5 Days  
Page 3

## **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]

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### **EXPLANATION:**

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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.

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### **RULES AS AMENDED:**

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#### **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.<sup>1</sup> 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:<sup>2</sup>

(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.

Proposal # 14 -- ORAP Rules 5.50, 6.05, 6.10, 6.15, and 6.30 -- Rules re: Court of Appeals Argument  
Page 1

(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.<sup>3</sup>

(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.<sup>4</sup>

(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.

<sup>1</sup> 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\(1\)](#).

<sup>2</sup> For other requirements for the excerpt of record in Land Use Board of Appeals cases, *see ORAP 4.67*.

<sup>3</sup> 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.

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

## Rule 6.05

### REQUEST FOR ORAL ARGUMENT; SUBMISSION WITHOUT ARGUMENT

(1) This rule applies to proceedings in the Court of Appeals 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.<sup>1</sup>

(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.

<sup>1</sup> 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);<sup>+</sup>
- (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.~~

<sup>+</sup>~~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.

(65) (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.<sup>1</sup> 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's 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.<sup>2</sup>

<sup>1</sup> See [ORAP 5.85](#) regarding memoranda of additional authorities.

<sup>2</sup> 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.<sup>1</sup> 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.

<sup>1</sup> 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

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### **EXPLANATION:**

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"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.]

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### **RULE AS AMENDED:**

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#### **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;

Proposal # 18 -- ORAP 6.25 -- Motions to Reconsider Court of Appeals Decisions Must Be Filed Within 14 Days  
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(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.<sup>1</sup>

(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.

<sup>1</sup> 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

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### **EXPLANATION:**

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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).

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### **RULE AS AMENDED:**

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#### **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 8.98, 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 9.1360(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 9.1360(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.

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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

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### **EXPLANATION:**

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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.)

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### **RULE AS AMENDED:**

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**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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<sup>1</sup> *See generally* [ORS 1.430](#).

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