

ORAP COMMITTEE 2026

March 11 -- Partial Agenda and Materials: Technical, Passed, Withdrawn Only

- ***Technical amendments:***

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

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

- ***To be passed for April meeting:***

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

- ***Withdrawn proposals:***

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

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

**ORAP COMMITTEE 2026
March 11 Materials**

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

PROPOSER: Daniel Parr

WORKGROUP: Stephen Armitage

EXPLANATION:

Workgroup notes for March 11: Corrected ORAP 3.43(2)(b)(i) from "Within a notice to transcriber assignment" to "Within a notice of transcriber assignment". No other changes.

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

RULE AS AMENDED:

Rule 3.43

TRANSFER OF PREVIOUSLY PREPARED TRANSCRIPTS BETWEEN APPEALS

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

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

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

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

(2) Request to Transfer Transcripts

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

(i) Within the designation of record included in the Notice of

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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 of 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
March 11 Materials**

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

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

WORKGROUP: Stephen Armitage

EXPLANATION:

Workgroup notes for March 11: Modified as directed by committee at February 12 meeting.

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

RULE AS AMENDED:

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

(1) In the body of a brief, parties shall not be referred to as appellant and respondent, but as they were designated in the proceedings below, except that in domestic relations proceedings the parties shall be referred to as husband₁, ~~or~~ wife, father₂, ~~or~~ mother, or other appropriate specific designation.

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

**ORAP COMMITTEE 2026
March 11 Materials**

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

PROPOSER: Lisa Norris-Lampe (Kendra Matthews submitted)

WORKGROUP: Kendra Matthews, Ryan Kahn or designee (Crystal Chase and
Travis Eiva to submit comments; Kirsten Naito and Stephen
Armitage added)

EXPLANATION:

Workgroup notes for March 11: The workgroup needs additional time to work on some aspects of the proposal, so it asks that the proposal be passed for the April meeting.

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

RULE AS AMENDED:

I. Amend ORAP 11.10

A. Summary of Proposed Amendments to ORAP 11.10.

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

B. Clean Version of Proposed Rule.

Proposal # 23 -- ORAP 11.10, new 11.12, 11.15 -- Reorganize Mandamus Rules and
Remove Obsolete Requirements

Rule 11.10
MANDAMUS:
RESPONSE BY ADVERSE PARTY; REPLY MEMORANDUM

(1) Unless the court directs otherwise, the adverse party in a mandamus proceeding that challenges the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals or the defendant in any other mandamus proceeding may file a memorandum in opposition.¹ The form of the memorandum must comply with [ORAP 7.10\(1\) and \(2\)](#). Any such memorandum must be filed within 14 days after the date the petition was filed.

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

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

C. Proposed Amendments.

Rule 11.10
MANDAMUS:
RESPONSE BY ADVERSE PARTY ~~AND~~
CONSIDERATION BY THE COURT; REPLY MEMORANDUM

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

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

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

~~(3) If the court issues an alternative writ of mandamus in a mandamus proceeding that challenges the action of a judge in a particular case in the circuit court, the Tax Court, or the Court of Appeals, the Administrator shall mail copies of the order allowing the petition and the~~

~~alternative writ of mandamus to the relator, to the adverse party, to any intervenor, and to the judge or court whose action is challenged in the petition. Proof of service of an alternative writ of mandamus need not be filed with the court. Unless the alternative writ of mandamus specifically requires that a return, answer, or responsive pleading be filed, the judge or court to which the writ is issued need not file a return, answer, or responsive pleading.~~

~~———— (4) ——— If the court issues an alternative writ in any other mandamus proceeding, the court shall set a return date in the writ, and the Administrator shall mail copies of the order allowing the petition and the alternative writ of mandamus to the relator, to the defendant, and to any intervenor. On or before the return date in the writ, the defendant shall either file a certificate of compliance or show cause by answer or motion to dismiss as provided by ORS 34.170. If the defendant fails to file a certificate of compliance or show cause by answer or motion to dismiss on or before the return date set in the writ, the court, without further notice to the parties, may issue a peremptory writ of mandamus, as provided in ORS 34.180. When the case is at issue on the pleadings,² the court will notify the parties to that effect.~~

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

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

² See ORS 34.170, ORS 34.180, and ORS 34.190.

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

II. Adopt ORAP 11.12

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

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

- *New* ORAP 11.12(1) replaces ORAP 11.10(2). There are no substantive changes.
- *New* ORAP 11.12(2) replaces ORAP 11.10(3), which relates to a mandamus proceeding challenging the action of a judge in a particular circuit court, the Tax Court, or the Court of Appeals. Breaks out the old subsection into multiple sections to make it more readable; clarifies a judge or court's obligation when an alternative writ is issued.
 - (a) (amendment) Uses the word "transmit" instead of "mail" to reflect that the SCA uses electronic means to notify litigants and judges when possible.
 - (b) (new provision): consistent with Supreme Court practice, the rule clarifies that the alternative writ will command a trial court response (compliance or a show cause) by a specified date.
 - (c) (amendment): this new section clarifies that, by statute, a judge or court is not actually required to respond and explains what happens if it does not complete the act as directed by the return date.
 - (d) (amendment): requires prompt notice to the Supreme Court and specific argument from relator if the lower court takes action to comply. Although ORAP 11.10(5), which is ORAP 11.12(4) in the proposed amendments, already includes a notice requirement, this more specific rule is intended to reduce the times that the Supreme Court learns of the trial court's compliance at or on the eve of oral argument and finds that the parties are unprepared to address the impact of compliance on the case.
- *New* ORAP 11.12(3) replaces ORAP 11.10(4), which relates any other type of mandamus proceeding.
 - (a) (amendment) Uses the word "transmit" instead of "mail" to reflect that the SCA uses electronic means to notify litigants and judges when possible.
 - (b) and (c) are already contained in ORAP 11.10(4); they are broken out into separate subsections for greater clarity.
- *New* ORAP 11.12(4) and ORAP 11.12(5) replace ORAP 11.10(5).
 - There is no substantive change to the notice requirement. This subsection is broken into two parts because the last sentence, which relates to how the Supreme Court will react to a notice of compliance, applies to a notice

served pursuant to ORAP 11.12(2)(d) and one served pursuant to ORAP 11.12(4).

B. Clean Version of Proposed Rule.

Rule 11.12

MANDAMUS:

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

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

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

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

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

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

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

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

(a) If the court issues an alternative writ of mandamus, the Administrator shall transmit copies of the order allowing the petition and the alternative writ of mandamus to
Proposal # 23 -- ORAP 11.10, new 11.12, 11.15 -- Reorganize Mandamus Rules and
Remove Obsolete Requirements

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

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

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

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

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

¹ See generally [ORS 34.170 through 34.190](#).

C. Proposed Amendments.

Rule 11.12

MANDAMUS:

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

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

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

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

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

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

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

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

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

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

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

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

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

¹ See generally [ORS 34.170 through 34.190](#).

III. Amend ORAP 11.15

A. Summary of Proposed Amendments to ORAP 11.15.

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

B. Clean Version of Proposed Rule.

Rule 11.15

MANDAMUS: BRIEFS AND ORAL ARGUMENT

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

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

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

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

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

C. Proposed Amendments.

Rule 11.15

MANDAMUS: BRIEFS AND ORAL ARGUMENT

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

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

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

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

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

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

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

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

IV. ORAP 11.17

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

Rule 11.17
MANDAMUS:
ISSUANCE OF COMBINED
PEREMPTORY WRIT OF MANDAMUS
AND APPELLATE JUDGMENT

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

See [ORS 34.250\(8\)](#).

**ORAP COMMITTEE 2026
March 11 Materials**

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

PROPOSER: Benjamin Gutman

WORKGROUP: Ryan Kahn (to report back).

EXPLANATION:

Workgroup notes for March 11: After discussion, the proposed amendment is withdrawn.

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

RULE AS AMENDED:

**Rule 6.25
RECONSIDERATION BY COURT OF APPEALS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(64)~~ If a response to a petition for reconsideration is filed, the response shall be filed within seven days after the petition for reconsideration was filed. The court will proceed to

consider a petition for reconsideration without awaiting the filing of a response, but will consider a response if one is filed before the petition for reconsideration is considered and decided.¹

(7~~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 is subject to [ORAP 7.05](#) regarding motions in general.

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

**ORAP COMMITTEE 2026
March 11 Materials**

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

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

WORKGROUP: Kendra M. Matthews

EXPLANATION:

Workgroup notes for March 11: After discussions, the proposed amendment is withdrawn.

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

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

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

RULE AS AMENDED:

Rule 13.10

PETITION FOR ATTORNEY FEES

Proposal # 27 -- ORAP 13.10(9) -- Make Amount of Attorney Fees Discretionary in
Absence of Objection

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

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

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

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

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

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

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

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

reply that the party is requesting findings pursuant to this rule.³ A party's failure to request findings in a petition, objection, or reply in the form specified in this rule constitutes a waiver of any objection to the absence of findings to support the court's decision.

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

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

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

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

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

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

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

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

See [Appendix 13.10](#).