

ORAP COMMITTEE 2026

August 20, 2026

Technical Agenda

NOTE: Other than formatting, all statements attributed to the commenters are direct quotes.

ORAP 5.45:

Judge Aoyagi: One doesn't preserve *an error* -- one preserves a *claim of error*. Existing ORAP 5.45(1) correctly refers to preserving the claim of error, but the proposed language refers to preserving "the error."

Rule 5.45

ASSIGNMENTS OF ERROR AND ARGUMENT

(1) Assignments of error are required in all opening briefs of appellants and cross-appellants. No matter claimed as error will be considered on appeal unless the claim of error was preserved in the lower court and is assigned as error in the opening brief in accordance with this rule, provided that the appellate court may, in its discretion, consider a plain error.¹ The court may decline to consider any assignment of error that requires the court to search the record to find the error or to determine if the error properly was raised and preserved.

The words "claim of" just need to be added in that one place, so it reads "...determine if the **claim of** error properly...."

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Judge Hadlock (ret): I think there is an extraneous word in the full sentence that is proposed for addition [ORAP 5.45(4)(b)]:

(b) Where a party has requested that the court review a claimed error as plain error, the party must identify the precise error, specify the state of the proceedings when the error was made, and set forth pertinent quotations of the record where the challenged error was made under the subheading "Preservation of Error". When a party contends that the error was preserved in the lower court but requests plain error review in the alternative, the party may request plain error review and explain the reasons why that the court should consider the error in the argument section.³

It seems that either the "why" or the "that" that I have put in red type [highlighted in this copy] should be eliminated.

ORAP 6.05(1):

Judge Hadlock (ret): There seems to be an extraneous space in “inperson”:

“(in- person, by remote means, or hybrid, as described in ORAP 6.30).”

ORAP 6.05(4) and ORAP 11.12(2)(d):

Judge Hadlock (ret): Many other ORAPs that impose time limits use the word “after” in describing how much time a party has to do something after a particular triggering event has occurred. For example, ORAP 6.25(2) states: “A petition for reconsideration shall be filed within 14 days after the decision.”

However, proposed ORAP 6.05(4) and proposed ORAP 11.12(2)(d) use different wording: “within [a certain number of] days of” the triggering event. Although it seems unlikely that a reader would interpret that phrasing (“within * * * days of”) to suggest that the time limit precedes the triggering event, I suggest that the wording be consistent throughout the ORAPs so that the words “days of” be changed to “days after” throughout ORAP 6.05 [subsections (4)(b)(ii), (iv) and (4)(c)(i), (ii)] and in ORAP 11.12(2)(d).

ORAP 13.25(3)(c):

Judge Hadlock (ret): I think the word “to” is missing from the lead-in sentence and should be inserted before the word “award” as indicated in underlined blue type here:

“In determining whether to sanction a person in excess of the amount under paragraph (3)(b)(i) of this rule, to award attorney fees under paragraph (3)(b)(ii), or to include other sanctions under paragraph (3)(b)(iii), and whether to permit the filing of a new document in the place of a stricken one, the court will consider:”