

IN THE COURT OF APPEALS
OF THE STATE OF OREGON

The Supreme Court and Court of Appeals propose to adopt permanent amendments to the Oregon Rules of Appellate Procedure (ORAP) and appendices. The public is invited to submit comments on those proposals.

ORAP 1.32, 1.35, 1.40, 1.45, 2.35, 3.30, 3.35, 3.43 (new), 3.50, 4.20, 5.05, 5.15, 5.45, 5.50, 6.05, 6.10, 6.15, 6.20, 6.25, 6.30, 7.10, 8.15, 8.45, 11.05, 11.10, 11.12 (new), 11.15, 11.17, 12.25, 12.27, 13.05, 13.25, 16.10, 16.45, and 16.60.

<i>RULES AMENDED</i>	<i>SUMMARY</i>
1. ORAP 1.32 , 1.35 , 6.10 , 8.15 , 16.10 , 16.45 , and 16.60	Temporary Rules -- Terminology -- Change Oregon State Bar "Member" to "Licensee"
2. ORAP 1.35	Filing and Service -- Clarifications re Duplicative Filings and Service Requirements
3. ORAP 1.40 , 13.25	Court of Appeals Verification and Sanctions -- Use of Fabricated Authorities from Artificial Intelligence
4. ORAP 1.45	Filings -- Cannot Use Color Text or Highlighting
5. ORAP 2.35	Supreme Court Summary Determination of Appealability -- Caption Requirement
6. ORAP 1.35(2)(b)(ii) , ORAP 16.45(2)(a)	eService Mandated for eFiled Documents

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
11.	ORAP 5.15	Brief References -- Party Designation in Domestic Relations Cases
13.	ORAP 5.45	Plain Error Rule -- Revisions and Explanations
15.	ORAP 5.05 , 3.35 , 5.50	Excerpts of Record -- Streamline Requirements
16. and 14.	ORAP 5.50 , 6.05 , 6.10 , 6.15 , 6.20 , and 6.30	Court of Appeals Oral Argument Requests -- Time Runs from Reply Brief, and Temporary Rules
18.	ORAP 6.25	Court of Appeals Reconsideration of Orders -- 14 Days for Motion to Reconsider
19.	ORAP 8.45	Notice of Mootness -- Probable Mootness, Does Not Require Party to Argue for Dismissal
23.	ORAP 11.05 , 11.10 , 11.12 (new), 11.15 , 11.17	Supreme Court Mandamus -- Consolidate and Clean Rules
24.	ORAP 12.25	Supreme Court Bar Proceedings -- Correct Terminology and Cross References
25.	ORAP 12.27	Supreme Court Judicial Disability Proceedings -- Correct Limiting Term in Rule Subcaption
26.	ORAP 13.05	Costs -- Address Supreme Court Remand to Court of Appeals

The proposed amendments have been drafted by the ORAP Committee, which was created by the Chief Justice of the Supreme Court and the Chief Judge of the Court of Appeals. The committee's draft proposals are now being published for public comment. After the committee has reviewed the public comments, the committee will prepare final proposals that will be submitted to the appellate courts for their consideration. Those amendments adopted by the courts will become effective January 1, 2027.

The proposed amendments to the rules and appendices are shown below. Lines with

changes have a mark in the left margin. Deleted material is shown in red ~~strikeout~~ print; added material is shown in red underlined print. (Colors will show only in electronic versions of this document, which can be downloaded at <<https://www.courts.oregon.gov/courts/appellate/rules/Pages/orap.aspx>>.)

Anyone may submit comments on the proposed amendments. ***Comments must be received by Friday, July 17, 2026.*** Please email comments to

ORAP.committee@ojd.state.or.us

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

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

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

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

(2) If an attorney for a party files a change of address with the Oregon State Bar, or if an out-of-state attorney or a self-represented party notifies the court of a change of mailing or email address in writing or otherwise, the attorney or party must inform all other parties of the change of mailing or email address within seven calendar days.

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

Rule 1.35
FILING AND SERVICE

(1) Filing

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

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

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

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

(B) Except as otherwise provided in ORAP 16.30 or 16.60(2), any other person may file any document by either the eFiling system or by paper filing. Paper filing should be made either by delivering the document via U.S. Postal Service or commercial delivery service to the Appellate Court Administrator, Appellate Court Records Section, 1163 State Street, Salem, Oregon 97301-2563 or in person to the Appellate Court Administrator, Appellate Court Records Section, 1163 State Street, Salem, Oregon 97301-2563.¹

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

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

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

(b) Manner of Filing

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

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

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

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

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

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

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

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

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

(2) Service

(a) (i) Except as provided in clause (2)(a)(ii) of this subsection, a party filing a document with the court must serve a true copy of the document on each other party or attorney for a party to the case.³⁴

(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.⁴⁵ After the court has ruled on the motion, if another party to the case requests a copy of the motion or documentation of financial eligibility for the purpose of challenging the court's ruling, the filing party must comply with the request but may redact protected personal information as described in ORAP 8.50(1). As used in this clause, "documentation of financial eligibility" means a document showing eligibility for a government benefit based on financial need or an affidavit or declaration showing the income, assets, and financial obligations of a party and the party's household.

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

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

(ii) Except for an initiating document, a party eFiling a document must utilize Eelectronic 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.

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

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

²³ 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."

³⁴ 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.

⁴⁵ 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>).

⁵⁶ 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 1.40

VERIFICATION; DECLARATIONS; ADOPTING ORCP 17

(1) Except if specifically ~~require~~required by statute, ~~no thing~~nothing filed with the appellate court need be verified.

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

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

(b) signed and dated by the person; and

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

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

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

(5) In addition to the general certifications in ORCP 17 C, a person signing a document as required by ORCP 17 that is filed in an appellate court is certifying that the document does not contain any fabricated authority.

(a) As used in the Oregon Rules of Appellate Procedure, "fabricated authority" means legal or factual content that is fake, whether created by artificial intelligence or otherwise, and includes but is not limited to a citation of law that does not exist, a quotation that does not appear in the citation attributed to it, a proposition of law that is not reasonably related to the citation attributed to it, or factual support that is fictitious and does not have a basis in the record.²

(b) This subsection does not apply to an attorney filing a supplemental *pro se* brief prepared by the attorney's client under ORAP 5.92.

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

² See *Ringo v. Colquhoun Design Studio, LLC*, 345 Or App 301, 582 P3d 695 (2025) (imposing sanctions on an attorney for citation of fabricated authority and describing the negative impact AI is having on the court system and the rule of law); see also *Powell v. Employment Department*, 347 Or App 55, ___ P3d ___ (2026) (imposing sanctions on a self-represented party for citation to fabricated authority that resulted from the party's reliance on online search engines and AI and describing the resulting prejudice to the opposing party and waste of judicial resources).

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

Rule 1.45

FORM REQUIREMENTS

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

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

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

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

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

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

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

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

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

¹ See ORS 7.250.

Rule 2.35

SUMMARY DETERMINATION OF APPEALABILITY AND EXPEDITED SUPREME COURT REVIEW

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

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

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

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

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

(b) The caption of a motion for summary determination of appealability filed in a direct appeal in the Supreme Court shall prominently display the words "Expedited

Summary Determination of Appealability Pursuant to ORAP 2.35(1).”

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

See generally ORS 19.235.

Rule 3.30

EXTENSION OF TIME FOR PREPARATION OF TRANSCRIPT

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

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

- (a) a party responsible for causing the transcript to be prepared,
- (b) the transcriber or court reporter (in audio and video record cases) responsible for preparing a transcript if the party responsible for causing the transcript to be prepared has made payment arrangements, or
- (c) the transcript coordinator if the transcript coordinator has not assigned a transcriber.

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

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

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

(6) Any party may file an objection to a court reporter's or transcriber's request for an

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

See generally ORS 19.395.

Rule 3.35

FORM OF TRANSCRIPT

(1) A transcript shall meet these specifications:

(a) It shall be prepared using proportionally spaced 12-point type (such as produced by commercial printers and many computer printers). The font size shall be uniform and not vary from line to line or within the same line. Uppercase and lowercase letters shall be used according to rules of grammar; a transcript shall not be prepared using all uppercase letters.

(b) It shall be prepared on good quality white, opaque, unglazed paper, 8-1/2 x 11 inches in size, with numbered lines, and printed on both sides of each page.¹ It shall be double-spaced and each page shall contain 25 lines of text, no more and no less, except for the last page of the transcript. The margins of each page shall be one inch on each side, at the top, and at the bottom.

(c) Each question shall be prefaced by "Q" and each answer shall be prefaced by "A." Each question and answer shall begin on a separate line no more than five spaces from the left margin and no more than five spaces from the "Q" and "A" to the beginning of the text. Text that carries on to the next line shall begin at the left margin.

(d) Colloquy, parentheticals, and exhibit markings shall begin no more than 15 spaces from the left margin. Text that carries on to the next line shall begin at the left margin.

(e) Quoted material shall begin no more than 15 spaces from the left margin. Text that carries on to the next line shall begin no more than 10 spaces from the left margin.

(f) Each page shall be consecutively numbered at the top right corner, and to the left thereof shall be given the name of the witness followed by a notation indicating whether the testimony is on direct, cross, redirect or recross examination, indicated by "D," "X," "ReD," or "ReX."

(g) Appropriate notation similarly shall be made of other proceedings, such as a motion for dismissal or a directed verdict, audio or video recording played in court, requested jury instructions, jury instructions, any opinion by the court, and other matters of special importance. If possible, the voice or voices on an audio or video recording played in court must be identified by name or by role (such as "police officer," "suspect," "interviewer," "child").

(h) It shall be preceded by an appropriate title page followed by an index noting:

(i) the first page of the direct, cross, redirect, and recross testimony of each witness;

(ii) all exhibits, with notation of the nature thereof and of the page of the record where offered and, when appropriate, where received in evidence; and

(iii) appropriate notations of other proceedings such as motions for involuntary dismissal and directed verdict, audio or video recording played in court, requested jury instructions, jury instructions, opinion of the court and other matters of special importance.

(i) Each transcript volume shall be bound in a manner that allows the pages of the transcript to lie flat when the transcript is open, as provided in this paragraph. The transcript volume shall be bound with a plastic comb binding, with the binding within 3/8 inch from the left edge of the transcript. A transcript volume may be bound by stapling if the transcript does not exceed 20 pages (10 pieces of paper), excluding the cover. A transcript volume bound by stapling shall be secured by a single staple placed as close to the upper left-hand corner as is consistent with securely binding the transcript.

(j) It shall have a cover sheet of clear plastic or 65-pound weight paper, front and back.

(k) If a transcript exceeds 200 pages, it shall be bound into volumes of approximately equal size of not more than 200 pages each. Volumes shall be consecutively numbered on their covers.

(2) The electronic version of the transcript filed with the Administrator as required by ORAP 3.33(4)(c) shall be in the following form:

(a) The electronic transcript shall be in Portable Document Format (PDF) that allows text searching, and copying and pasting into another document. The pagination of the transcript served on the parties shall correspond to the pagination of the electronic transcript filed with the court.

(b) ~~If the transcript exceeds 200 pages, the electronic transcript shall be broken into separate PDF files of approximately equal length not to exceed 200 pages. Absent good cause, a transcript shall be filed as a single PDF file. If the proceedings were recorded by multiple transcribers, there may be as many PDF files as there are~~

transcribers. Regardless of whether a transcript consists of one or more PDF files, each file shall be named in accordance with the file naming conventions set out in Appendix 3.35. If a PDF file contains more than one proceeding date, the beginning of each proceeding shall be bookmarked.~~Absent good cause, a transcript shall be filed as a single PDF file.~~ The page numbering of each PDF transcript file shall begin with the caption page counted as number 1, and every subsequent page shall be consecutively numbered. Alternative numbering formats—e.g., using roman numerals or starting each volume with page 1—may not be used. Although caption pages must be included in the consecutive numbering, the page number need not be printed on caption pages. All pages shall be included in the consecutive numbering, including but not limited to caption pages and blank pages such that the page numbering is consistent with the PDF numbering.

(c) ~~If the transcript is in two volumes or less, it~~A transcript may be filed by attaching the electronic transcript to an email directed to appealsclerk@ojd.state.or.us. If the Administrator determines that an electronic transcript must be rejected for security reasons (e.g., virus or malware), or because the transcript file exceeds the size limits for transmitting by email, the court reporter or transcriber shall resubmit the transcript as directed by the Administrator. ~~If the transcript is more than two volumes, it shall be filed by optical disk.~~

(d) The electronic transcript shall comply with ORAP 3.35(1)(a), (c), (d), (e), (f), (g), and (h). The electronic transcript also shall comply with ORAP 3.35(1)(b), except that it will not be printed. Notwithstanding ORAP 3.33(5)(c), the electronic transcript filed with the court shall be prepared in the one page of transcript per one standard page format.

¹ See ORAP 4.20 regarding use of previously prepared single-sided transcripts in judicial review cases.

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 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.

Rule 3.50 RETURN OF RECORDS AND EXHIBITS

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

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

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

Rule 4.20 RECORD ON JUDICIAL REVIEW

* * * * *

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

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

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

Rule 5.05

SPECIFICATIONS FOR BRIEFS

(1) (a) Except as provided in paragraph (1)(c) of this subsection, an opening, answering, combined, or reply brief must comply with the word-count limitation in paragraph (1)(b) of this subsection.¹ Headings, footnotes, and quoted material count toward the word-count limitation. The front cover, index of contents and appendices, index of authorities referred to, ~~excerpt of record~~, appendices, certificate of service, any other certificates, and the signature block do not count toward the word-count limitation.

* * * * *

(c) Pages must be consecutively numbered at the top of the page within 3/8 inch from the top of the page. ~~Pages of an excerpt of record included with a brief must be numbered independently of the body of the brief, and each page number must be preceded by "ER," e.g., ER-1, ER-2, ER-3.~~ Pages of appendices must be preceded by "App," e.g., App-1, App-2, App-3.

* * * * *

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

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

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

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

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

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

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.

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

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

(4) ~~(a)~~ — Each assignment of error must demonstrate that the question or issue presented by the assignment of error timely and properly was raised and preserved in the lower court or explain why the court nonetheless may review the assignment of error with citations to applicable authority.² ~~The court may decline to consider any assignment of error that requires the court to search the record to find the error or to determine if the error properly was raised and preserved.~~

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

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

(ii) The party assigning error ~~Each assignment of error~~ must set out pertinent quotations of the record where the question or issue was raised and the challenged ruling was made, together with reference to the pages of the transcript or other parts of the record quoted or to the excerpt of record if the material quoted is set out in the excerpt of record. When the parts of the record relied on under this clause are lengthy, they must be included in the excerpt of record instead of the body of the brief.

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

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

(5) Under the subheading "Standard of Review," each assignment of error must identify the applicable standard or standards of review, supported by citation to the statute, case law, or other legal authority for each standard of review.²⁴

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

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

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

State v. Vanornum, 354 Or 614, 629-30, 317 P3d 889 (2013).

² *See Peebles v. Lampert*, 345 Or 209, 219-21, 191 P3d 637 (2008) (explaining general preservation requirement, the prudential policies it serves, and noting when those prudential policies give way under narrow circumstances, e.g. when a party has no practical ability to raise an issue or when preservation would have been futile because the trial court would not have permitted an issue to be raised or the record to be developed).

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

²⁴ Standards of review include but are not limited to *de novo* review and substantial evidence for factual issues, errors of law and abuse of discretion for legal issues, and special statutory standards of review such as those found in the Administrative Procedures Act, ORS 183.400(4), and ORS 183.482(7) and (8). *See also* ORS 19.415(1), which provides that, generally, "upon an appeal in an action or proceeding, without regard to whether the action or proceeding was triable to the court or a jury," the court's review "shall be as provided in section 3, Article VII (Amended) of the Oregon Constitution"; ORS 19.415(3)(b) regarding discretion of the Court of Appeals to try the cause *de novo* or make one or more factual findings anew on appeal in some equitable proceedings; *see also* ORAP 5.40(8) concerning appellant's request for the court to exercise *de novo* review and providing a list of nonexclusive items Court of Appeals may consider in deciding whether to exercise its discretion.

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

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~~ file an excerpt of record at the same time as the opening brief.¹ The parties to an appeal are encouraged to confer regarding the content of the excerpt of record, including whether to file a joint excerpt of record to be ~~included in~~ filed with the opening brief.

(2) The excerpt of record must contain:²

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

(b) ~~Each assignment of error must identify precisely~~ The portion of the record containing the legal, procedural, factual, or other ruling being appealed, reviewed, or collaterally challenged, whether oral or written, final or interim. If the decision was an oral one, the relevant transcript pages must be included ~~Any written or oral rulings by the lower tribunal or agency addressing the issues presented by the assignments of error.~~

(c) ~~Any pleading or excerpt of pleadings, particular part of the transcript,~~

~~exhibit, evidentiary submission and other filing necessary for reviewing and understanding the assignments of error in advance of oral argument, if the parties anticipate that the case will be orally argued~~All parts of the record relevant for deciding the appeal, including

(i) all parts of the trial court record cited or referenced in the briefs,
and

(ii) as well as any transcript pages a party believes to be central to the issue on appeal.³

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

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

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

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

(34) A respondent may file, ~~as part of~~with the respondent's brief, and an appellant may file, with the reply brief, a supplemental excerpt of record containing those materials required by subsection -(2) of this rule that were omitted from the excerpt of record.

(45) 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) The excerpt of record and any supplemental excerpt of record must be filed as a separate filing.

(cb) Contents must be set forth in chronological order, except that the decisions being appealed must be the first document(s) in the excerpt of record and the OECI case register must be the last document in the excerpt of record. The excerpt must be consecutively paginated, with the caption first page being page paginated as ER-1 and every subsequent page shall be consecutively numbered, including but not limited to the table of contents of the excerpt, caption pages and blank pages, such that the page

numbering is consistent with the PDF numbering. The excerpt must begin with an index organized ~~chronologically~~in chronological order, describing each item and identifying where the item may be found in the trial court or agency record, and the page where the item may be found in the excerpt. The index may include bookmarks as described in ORAP 16.50. A supplemental excerpt of record must substantially conform to the same requirements, except that a supplemental excerpt must be paginated using "SER," *e.g.*, SER-1, SER-2, SER-3.

(~~ed~~) 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.

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

(~~56~~) Self-represented parties are not required to file an excerpt of record or a supplemental excerpt of record. If a self-represented party files an excerpt of record or a supplemental excerpt of record, it must contain only those documents specified in ORAP 5.50(2)(a) and (b), must contain no other documents, and must otherwise comply with this rule.⁴

(~~67~~) 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.

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

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

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

~~⁴ Under ORAP 6.05(4), cases in which a self-represented party files a brief are submitted without argument by any party. For that reason, any excerpt or supplemental excerpt of record submitted by a self-represented party shall not contain any of the documents otherwise required by ORAP 5.50(2)(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) (a) 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.

(b) If the parties agree that the case is suitable for submission on the briefs, the parties may file an optional Joint Request for Submission on the Briefs, described in subsection (3) of this rule. A Joint Request for Submission on the Briefs shall be filed no later than the date the answering brief is due.

(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 or a Joint Request for Submission on the Briefs that includes a request from all parties on appeal that the case will be submitted on the briefs. A joint Oral Argument Appearance Request shall contain the following information with respect to each party that intends to appear:

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

(ii) 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 (b) and (c) of this subsection, an Oral Argument Appearance Request shall be filed as soon as practicable but no later than 14 days after the filing of a reply brief, or, if no reply brief is filed, no later than 14 days after the reply brief was due. If more than one reply brief is filed or permitted to be filed, including in cross-appeals, the 14-day period runs from the date on which the last reply brief is filed or was due. For those cases listed in ORAP 5.70(3)(a)(i) to (iv), 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.

(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 Oral Argument Appearance Request or the parties file a Joint Request for Submission on the Briefs, 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 filed a timely Oral Argument Appearance Request 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 Oral Argument Appearance Request is filed, then the case will be set for oral argument in due course and the Administrator will send the parties notice of the date and time that argument has been scheduled. The case will be submitted to the court upon completion of oral argument.

(e) Subject to paragraph (5)(c) of this rule, when a respondent submits an

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

(6) Argument Format

(a) Under ORAP 6.30, the court holds oral argument in three formats: (i) in person, where all litigants appear in person; (ii) by remote means, where all litigants appear remotely; and (iii) hybrid, in which at least one litigant appears remotely, and at least one litigant appears in person.¹

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(iv) Notwithstanding subparagraph (iii), a party may move the court for~~

~~an order that an oral argument should proceed in person. The motion must be filed within seven days after the deadline for filing a Response to Notice of Submission and must explain the circumstances that support the request and demonstrate good cause for arguing in person; good cause does not include a mere preference for in person argument. Any party may file a response to the motion; the response must be filed within seven days after the filing of the motion.~~

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

~~—— (4) — Notwithstanding subsection (2) of this rule, when a respondent submits an answering brief confessing error as to all assignments of error and not objecting to the relief sought in the opening brief, the respondent shall so inform the court by letter when the brief is filed or at any time thereafter. On receipt of respondent's notice that a brief confesses error, the case will be submitted without oral argument. The appellant may by letter bring to the court's attention that a respondent's brief appears to confess error. If the court concurs, the case will be submitted without oral argument.~~

~~[†] 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~~ licensees of the Oregon State Bar shall argue unless the court, on motion filed not less than 21 days before the date for argument, orders otherwise. If the court has allowed a lawyer from

another jurisdiction to appear on appeal for a particular case under ORAP 8.10(4), the lawyer does not need leave of the court to participate in oral argument of the case.

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

~~(65)~~ (a) After any party has filed and served an Oral Argument Appearance R request ~~for oral argument~~ pursuant to ORAP 6.05(2), any party who decides to waive oral argument or cannot attend oral argument shall give the court and all other parties participating in oral argument at least 48 hours' notice that the party will not be appearing for oral argument.

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

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

Rule 6.15 PROCEDURE AT ORAL ARGUMENT

(1) In all cases in the Supreme Court:

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

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

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

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

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

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

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

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

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

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

¹ See ORAP 5.85 regarding memoranda of additional authorities.

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

Rule 6.20

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

The Court of Appeals will set most cases for argument in Salem, but, pursuant to Chief Justice Order ~~19-05324-018~~, dated ~~September 17, 2019~~ June 21, 2024, the court may set cases for oral argument in other locations throughout the state, and, pursuant to Chief Justice Order 22-012, dated June 23, 2022, which includes setting may set cases for oral argument by remote means. For purposes of this rule, "remote means" refers to an oral argument conducted by video conference with all parties and judges appearing remotely.

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

Rule 6.25

RECONSIDERATION BY COURT OF APPEALS

(1) As used in this rule, "decision" means an opinion, per curiam opinion,

nonprecedential memorandum opinion, affirmance without opinion, and an order ruling on a motion or an own motion matter that disposes of the appeal. A party seeking reconsideration of a decision of the Court of Appeals shall file a petition for reconsideration. A petition for reconsideration shall be based on one or more of these contentions:

- (a) A claim of factual error in the decision;
- (b) A claim of error in the procedural disposition of the appeal requiring correction or clarification to make the disposition consistent with the holding or rationale of the decision or the posture of the case below;
- (c) A claim of error in the designation of the prevailing party or award of costs;
- (d) A claim that there has been a change in the statutes or case law since the decision of the Court of Appeals; or
- (e) A claim that the Court of Appeals erred in construing or applying the law. Claims addressing legal issues already argued in the parties' briefs and addressed by the Court of Appeals are disfavored.

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

- (a) The full case caption, including appropriate party designations for the parties as they appeared in the court from which the appeal was taken and as they appear on appeal, and the trial and appellate court case numbers; and
- (b) A title designating the party filing the petition, such as "Appellant's Petition for Reconsideration" or "Respondent's Petition for Reconsideration."

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

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

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

¹

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.

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

(1) For purposes of this rule,

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

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

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

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

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

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

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

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

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

(b) (i) A party may file a motion requesting that an argument scheduled to be conducted in person be conducted by remote means. Such a motion must be

filed at least 21 days before the scheduled date of the oral argument and must state the scheduled date and time of the oral argument and explain the circumstances that support the request.

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

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

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

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

Rule 7.10 PREPARATION, FILING, AND SERVICE OF MOTIONS

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

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

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

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

~~(56)~~ A motion or response that is confidential, filed under seal, or otherwise exempt from disclosure³ 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 disclosure⁴ must comply with the requirements of ORAP 8.52.

Rule 8.15 ***AMICUS CURIAE***

(1) Except as provided in subsection (8), a person¹ may appear as *amicus curiae* in any case pending before an appellate court only by permission of the court on written motion setting forth the interest of the person in the case. Any motion to appear as *amicus curiae* shall not contain argument on the resolution of the case and otherwise must:

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

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

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

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

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

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

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

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

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

(4) In the Court of Appeals,

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

aligned or, if unaligned, seven days after the due date for the opening brief.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³ See ORAP 6.10 concerning oral argument.

Rule 8.45

DUTY TO GIVE NOTICE WHEN FACTS RENDER APPEAL MOOT

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

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

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

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

(2) When an appellant believes that the appeal is moot based on privileged facts, that

party may move to dismiss the appeal as moot, but need not reveal the privileged facts.

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

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

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

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

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

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

Rule 11.05

MANDAMUS:

INITIATING A MANDAMUS PROCEEDING

(1) A party seeking a writ of mandamus in the Supreme Court shall apply by filing a petition substantially in the form prescribed by this rule.

(2) Except as otherwise provided in this rule, a petition for writ of mandamus shall comply as to form with ORAP 5.05(3). The petition shall also include, in addition to any matters

required by law:

(a) A title page including a caption containing the title of the proceeding, a heading indicating the type of writ requested (e.g., "petition for alternative writ of mandamus," "petition for peremptory writ of mandamus"), and, if the mandamus proceeding arises from a matter before a lower court or administrative agency, the identifying number, if any, assigned to the matter below.

(i) 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~~ lower court, the case title of the proceeding shall be the same as the case title in the lower court, except that the party seeking relief shall be designated as the "relator" in addition to that party's designation in the ~~trial~~ lower court, and the adverse real party in interest shall be designated as the "adverse party" in addition to that party's designation in the ~~trial~~ lower court. The judge or court shall not be named as a defendant in the mandamus proceeding.¹

(ii) In any other mandamus proceeding,² the case title of the proceeding shall be "State ex rel _____, Plaintiff-Relator, v. _____, Defendant," which title shall appear on the petition and all other documents filed in the proceeding.³

(b) On the title page, the relator shall include the litigant contact information required by ORAP 1.30. If any party is not represented by an attorney, the title page shall include the party's name, mailing address, and telephone number.

(c) A statement in support of the petition, containing:

(i) A concise but complete statement of facts material to a determination of the question or questions presented and the relief sought;

(ii) A statement why the petition is timely.⁴

(iii) A statement why application was not made to the circuit court for relief; and

(iv) A statement why appeal or any other applicable potential remedy is not a plain, speedy and adequate remedy in the ordinary course of law, precluding issuance of the writ.⁵

(d) Proof of service as follows:

(i) In a mandamus proceeding that challenges the action of a judge or lower court in a particular case ~~in the circuit court, the Tax Court, or the Court of Appeals~~, the relator shall accompany the petition with proof of service on the adverse party, any other party (if any) to the proceeding in the lower court, and the judge or court whose action is challenged in the mandamus proceeding.

(ii) In any other mandamus proceeding, the relator shall accompany the petition with proof of service on the defendant and, if the mandamus proceeding arises from another proceeding or controversy, proof of service on any other party to the proceeding or controversy.

(iii) If the state, a state officer, or a state agency is a party to the case, proceeding, or controversy from which the mandamus proceeding arises, the relator shall include proof of service on the Attorney General.⁶

(e) If the relator seeks a stay in the proceedings from which the mandamus proceeding arises, the caption shall indicate "STAY REQUESTED," and the relator shall show, in the statement in support of the petition, that the relator requested a stay from the court, judge, or administrative agency or official whose order or decision is being challenged and that the request for a stay was denied, or that it would be futile to request a stay from the court, judge, or administrative agency or official. If the relator seeks to have the Supreme Court stay the proceedings from which the mandamus proceeding arises, the relator shall file a motion pursuant to chapter 7 of the Oregon Rules of Appellate Procedure.

(f) If the mandamus proceeding challenges a written order or decision, a copy of the order or decision shall be attached to the petition.

(3) The relator shall accompany the petition:

(a) With a memorandum of law with supporting arguments and citations. The form of the memorandum shall comply with ORAP 7.10(1) and (2).

(b) If the mandamus proceeding arises from a matter in which a record has been made, the relator must assemble an excerpt of record containing such parts of the record relating to the matter as is necessary for a determination of the question or questions presented and the relief sought. The excerpt of record must comply with ORAP 5.50(5).

(c) In a mandamus proceeding that challenges the action of ~~the Court of Appeals, the Tax Court, or~~ a judge or lower court in a particular case ~~in the circuit court~~, the relator need not accompany the petition with a proposed form of writ of mandamus; in any other mandamus proceeding, the relator shall do so.

(4) (a) The caption of any memorandum, motion, or any other document filed in the mandamus proceeding, except the petition for a writ of mandamus, shall display prominently the words "MANDAMUS PROCEEDING."⁷

(b) If no record was made below, the petition, memorandum, and other supporting material may be submitted as a single document.

(c) If a record was made in the matter from which the mandamus proceeding has arisen, the relator shall assemble and submit the petition, the memorandum in support of the petition, and the excerpt of record as separate documents.

(d) The original petition and accompanying documents shall be filed with the Administrator.

(5) If the petition, memorandum, or an accompanying motion in a mandamus proceeding includes an attachment containing material that is, by statute or court order, confidential, sealed, or otherwise exempt from disclosure,⁸ the filing must comply with the requirements of ORAP 8.52.

¹ See Illustration 1a in Appendix 11.05.

² For example, mandamus proceedings that challenge the act or failure to act of a public official or administrative agency, or that challenge administrative action of a judge or other action of a court of an institutional nature.

³ See Illustrations 2 and 3 in Appendix 11.05.

⁴ See *State ex rel Redden v. Van Hoomissen*, 281 Or 647, 576 P2d 355 (1978), and *State ex rel Fidanque v. Paulus*, 297 Or 711, 688 P2d 1303 (1984), regarding timeliness. As a rule of thumb, the relator usually should file the petition within 30 days after the date of the action that the relator seeks to challenge in mandamus.

⁵ See ORS 34.110; *State ex rel Automotive Emporium v. Murchison*, 289 Or 265, 611 P2d 1169 (1980).

⁶ See footnote 2 to ORAP 1.35 for the service address of the Attorney General.

⁷ See Illustration 1b in Appendix 11.05.

⁸ See, e.g., ORS 36.222(5) regarding confidential mediation communications and agreements; ORS 135.139, ORS 433.045(3), and ORS 433.055 regarding records revealing HIV test information; ORS 137.077 regarding presentence investigation reports; ORS 179.495 and ORS 179.505 regarding medical records maintained by state institutions; ORS 412.094 regarding nonsupport investigation records; ORS 419B.035 regarding abuse investigation records; ORS 426.160 and ORS 426.370 regarding records in civil commitment cases; and ORS 430.399(6) regarding alcohol and drug abuse records. See generally ORAP 16.15(5)(b) for procedure for eFiling attachments that are confidential or otherwise exempt from disclosure.

See ORS 34.105 to 34.240 regarding mandamus proceedings generally; ORS 34.120(2) regarding the Supreme Court's original mandamus jurisdiction; and ORS 34.200 and 34.250 regarding procedure in Supreme Court mandamus proceedings.

See ORS 21.010(1), (5) regarding filing fees.

Rule 11.10

MANDAMUS:

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

(1) Unless the court directs otherwise, the adverse party in a mandamus proceeding that challenges the action of a judge or lower court 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 shall must comply with ORAP 7.10(1) and (2). ~~The original~~Any such memorandum shall must 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) ——— 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 . 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 . 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.~~

~~———— (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.

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

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

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 decides to accept jurisdiction, it will 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 or lower court in a particular case; further actions.

(a) If the court issues an alternative writ of mandamus, the Administrator will 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 lower 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 lower court must either perform a specified act or that cause be shown why the judge or lower court should not be required to do so.

(c) Unless the alternative writ of mandamus expressly requires otherwise, the alternative writ's direction to show cause does not require the judge or court to file any 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 case will proceed to briefing and oral argument as provided in ORAP 11.15, without the judge or lower court showing cause.²

(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 will transmit copies of the order allowing the petition and the alternative writ of mandamus to the relator, to the defendant, and to any intervenor.

(b) If the court issues an alternative writ of mandamus, the writ will include a return date by which the Supreme Court commands that the defendant must either file a certificate of compliance or show cause by answer or motion to dismiss as provided by ORS 34.170.¹

(c) If the defendant fails to either file a certificate of compliance or show cause on or before the return date, the court, without further notice to the parties, may issue a peremptory writ of mandamus, as provided in ORS 34.180. Alternatively, the court may resolve the case on the pleadings or direct the parties to proceed to briefing and oral argument as provided in ORAP 11.15.

(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 34.250.

² See generally ORS 34.170 through 34.190.

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 ~~official~~ defendant, judge, or lower court to whom the writ was issued, the ~~relator shall file and serve the relator's opening brief;~~ must be filed and served within 28 days after the date the alternative writ of mandamus issued.

~~(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, as appropriate, must file and serve any answering brief within~~ 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.

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 lower court to which the writ is issued in a mandamus proceeding that challenges the action of a judge or lower court 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.

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~~~~interlocutory~~ 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 9.1255(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.

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*.

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.

¹ See generally ORS 1.430.

* See ORS 1.440(1).

Rule 13.05

COSTS AND DISBURSEMENTS

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

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

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

(4) (a) When a party prevails on appeal or on review and the case is remanded for further proceedings in which the party who ultimately will prevail remains to be determined, the court may allow costs to abide the outcome of the case. If the Supreme

Court remands to the Court of Appeals for further proceedings, any award of costs will abide the outcome of the appeal after the remand.

(b) If the court allows costs to abide the outcome of the case, the prevailing party shall claim its costs within the time and in the manner prescribed in this rule. The appellate court may determine the amount of costs under this subsection, and may condition the actual award of costs on the ultimate outcome of the case. In that circumstance, the award of costs shall not be included in the appellate judgment, but shall be awarded by the court or tribunal on remand in favor of the prevailing party on appeal or review, if that party also prevails on remand, and shall be awarded against the party designated on appeal or review as the party liable for costs.

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

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

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

(6) (a) (i) Except as provided in paragraph (ii) of this subsection, whether a brief is printed or reproduced by other methods, the party allowed costs is entitled to recover 10 cents per page for the number of briefs required to be filed or actually filed, whichever is less, plus one copy for each party served and one copy for each party on whose behalf the brief was filed.

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

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

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

(d) (i) For the purposes of awarding the prevailing party fee under ORS

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

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

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

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

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

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

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

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

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

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

² See ORS 20.190(4).

Rule 13.25
PETITIONS AND MOTIONS FOR DAMAGES
AND SANCTIONS

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

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

(3) An appellate court may impose sanctions against a person or party who has made a false certification under ORAP 1.40(5).

(a) If there is a basis to find that a person has filed a document with a false certification under ORAP 1.40(5), the court on its own motion, or the motion of any party, may strike the document. The court also may direct the person who filed the document to show cause within 14 days why the court should not proceed without the document, why sanctions under paragraph (3)(b) of this rule should not be imposed on the person who signed the document, and, in circumstances when the document is an opening brief or a case initiating document, why the matter should not be dismissed. Within 14 days after the response to the show cause order is filed, any other party to the appeal may file a supplemental response and may include a request for reasonable attorney fees incurred in responding to the circumstances of the false certification under ORAP 1.40(5).

(b) Absent good cause, the court will impose sanctions on a person for filing a document with a false certification under ORAP 1.40(5). A court may impose one or more of the following sanctions:

(i) Monetary sanctions. When the court imposes monetary sanctions, absent good cause, it will impose a minimum of \$500 each time a fabricated authority is referenced in the stricken document.

(ii) Attorney fees. Sanctions may include an award of reasonable attorney fees incurred by any other party as a result of the circumstances of the false certification under ORAP 1.40(5).

(iii) Other sanctions. Sanctions other than the sanctions specified in subparagraphs (i) and (ii) of this subsection may be imposed if the court determines that the sanctions are an effective remedy for the false certification under ORAP 1.40(5).

(c) In determining whether to sanction a person in excess of the amount under paragraph (3)(b)(i) of this rule, 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:

(i) The number of times in the stricken document a reference to a fabricated authority appears;

(ii) The number of occasions on which the person filing the document has been found by the appellate court, or any other court or agency to have filed documents containing a fabricated authority;

(iii) Any prejudice to the other parties to the case resulting from the false certification under ORAP 1.40(5);

(iv) The degree to which the party on whose behalf the document was filed played a role in including or encouraging the appearance of any fabricated authority; and

(v) Any such other factor the court deems relevant under the circumstances.

Rule 16.10

eFILERS

(1) Authorized eFilers

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

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

(2) Conditions of Electronic Filing

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

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

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

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

(iv) furnish required information for case processing; and

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

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

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

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

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

Rule 16.45 ELECTRONIC SERVICE

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

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

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

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

(a) The document to be served:

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

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

jurisdiction;

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

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

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

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

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

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

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

Rule 16.60

MANDATORY ELECTRONIC FILING

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

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

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

(2) An active ~~member~~-licensee of the Oregon State Bar who is required to file a document using the eFiling system under subsection (1) of this rule, may obtain a waiver of that requirement as follows:

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

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

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

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

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

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

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

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

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

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

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

(4) If a filer submits a document by paper filing in contravention of subsection (1) of this rule and either the filer has not obtained a waiver pursuant to subsection (2), or the electronic system is not unavailable as described in subsection (3), then the Administrator is authorized to take any of the following actions:

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

- (b) Refuse to accept the document for filing.
- (c) Return the document to the filer as unfiled.
- (d) Refer the filing to the court for consideration of sanctions under ORAP 1.20(2).